





Full Transcript Report

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-  Flaherty designations
-  Ds' Counters to Ps' Flaherty Designations
-  Ps' Counters to Ds' Flaherty Designations
-  D's Flaherty designations

Flaherty, Kevin

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01 UNITED STATES DISTRICT COURT

02 DISTRICT OF MINNESOTA

03 -----

04 UNITED STATES OF AMERICA

05 ex rel KIPP FESENMAIER,

06 Plaintiff,

07 VIDEO DEPOSITION OF:

08 -VS- KEVIN T. FLAHERTY, M.D.

09 CASE NO. 13-CV-3003 WMW/DTS

10 THE CAMERON-EHLEN GROUP, INC.,

11 dba PRECISION LENS and PAUL EHLEN,

12 Defendants.

13 -----

14 Video deposition examination of

15 KEVIN T. FLAHERTY, M.D., taken at the instance of

16 the Plaintiffs, under and pursuant to Rule 30 of

17 the Federal Rules of Civil Procedure and the acts

18 amendatory thereof and supplementary thereto,

19 pursuant to Subpoena upon the parties, before

20 Christine J. Willette, RDR, CRR, CRC, a Notary Public

21 in and for the State of Wisconsin, at the offices of

22 Willette Court Reporting, LLC, 630 Fourth Street,

23 Wausau, Wisconsin, on the 7th day of June 2019

24 commencing at 7:59 a.m. and ending at 10:28 a.m.

25

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23 ALSO PRESENT: Jon Hansen, CLVS

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25

26

27 The original transcript of the

28 deposition of DOUGLAS T. EDWARDS, M.D., was filed

29 with Attorney Samie.

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34

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13 P R O D U C T I O N R E Q U E S T S

14 NONE

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01 P R O C E E D I N G S

02

03 VIDEOGRAPHER: Good morning. We are on
04 the record. My name is Jon Hansen, CLVS. I am from
05 Henderson Legal Services.

06 Today's date: June 7, 2019. The time
07 is 7:59. This deposition is being held in Wausau,
08 Wisconsin.

09 The caption of the case: United States
10 of America versus the Cameron-Ehlen Group, Inc.,
11 et al., United States District Court for the District
12 of Minnesota. Case number: 13-CV-3003 WMW/DTS.

13 The witness this morning is
14 Dr. Kevin Flaherty.

15 At this time, if counsel could please
16 state your appearances for the record, after which
17 our reporter will swear in the witness, and we can
18 proceed.

19 MR. SAMIE: Assistant U.S. Attorney
20 Bahram Samie appearing on behalf of the United
21 States.

22 MS. VERKAMP: Jennifer Verkamp
23 appearing on behalf of relator.

24 MR. DIXON: Joe Dixon here for Paul
25 Ehlen. Also here on behalf of Cameron-Ehlen Group.

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01 MR. BIRRELL: Andy Birrell and
02 Steve Gaskins representing Dr. Flaherty.

03

04 KEVIN T. FLAHERTY, M.D., called as a
05 witness in this action, was sworn and testified as
06 follows:

07 THE WITNESS: I do.

08

09 EXAMINATION BY MR. SAMIE:

10 Q. Good morning, Dr. Flaherty.

11 A. Good morning.

12 Q. Have you ever had your deposition taken
13 before?

14 A. I have been deposed on behalf of some of my
15 patients before, yes.

16 Q. Okay.

17 A. I've never been sued.

18 Q. Okay. Well, I'm just going to go through a
19 couple just general background best practices --

20 A. Sure.

21 Q. -- for a deposition.

22 Basically, as I'm sure you can imagine,
23 I'm going to be asking you some questions today.

24 Counsel for defendants may also be asking you some
25 questions. And I'm going to be asking that you

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01 provide complete and truthful answers to the best of
02 your ability to those questions.

03 It's a little bit of an unusual
04 conversation because there's a court reporter present
05 here taking down everything that we're saying. And
06 so it's important for us to try our best to have a
07 clear record.

08 So that means, when you give answers,
09 try to give audible answers, like yes or no or --
10 instead of an uh-huh, huh-uh or other nonverbal
11 gestures.

12 Does that make sense?

13 A. Yes.

14 Q. And then also, along the same lines, for the
15 court reporter's ability to get everything down, I'm
16 going to do my best to wait for you to finish your
17 answer before I jump in with another question, and I
18 ask that you do the same. Let me finish my question
19 before you start your answer.

20 Does that work for you?

21 A. Yes, it does.

22 Q. To the extent that I ask something that
23 doesn't make sense or that you -- that you need
24 clarification on, I ask that you please let me know
25 so that I can try to clarify that.

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01 Otherwise, is it fair to assume, if you
02 answer it, that you understood the question?

03 A. I'd hope so.

04 Q. Okay.

05 MR. DIXON: And I may need a beat
06 between the answer and the question to interpose an
07 objection, just --

08 MR. SAMIE: Right.

09 MR. DIXON: -- because I get to
10 answer -- make an objection on behalf of the
11 defendants. So you've got to give me one beat
12 between your answer and the question, just to give me
13 an opportunity to do that.

14 THE WITNESS: Okay.

15 BY MR. SAMIE:

16 Q. So -- so there may be objections that come
17 up in -- during the course of the deposition. Unless
18 you are specifically directed not to answer the
19 question, I ask that, after the objection is made,
20 that you still provide an answer to the question.

21 A. Uh-huh. Okay.

22 Q. Okay. Great.

23 Have you talked to the defendants'
24 attorneys to prepare for this matter?

25 A. No.

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01 Q. No?

02 For this deposition?

03 A. No.

04 Q. Have you talked to defendants' attorneys at
05 all --

06 A. No.

07 Q. -- with respect to this litigation?

08 A. No.

09 Q. Have you talked to Mr. Ehlen about this
10 litigation?

11 A. No.

12 Q. No? Okay.

13 You are an ophthalmic surgeon?

14 A. Correct.

15 Q. You're employed at the Eye Clinic of
16 Wisconsin?

17 A. Yes.

18 Q. I'm going to refer to that as "ECOW."

19 A. That's what we call it, too. "E-COW" [ph].

20 Q. E-COW?

21 A. E-COW. E-COW.

22 Q. Oh, okay. All right. We are in Wisconsin
23 after all.

24 So you also perform cataract surgery --

25 excuse me. You perform cataract surgeries?

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01 A. I do.

02 Q. Do you perform the majority of those
03 surgeries at a surgical center?

04 A. Now the majority are performed in my ASC at
05 our office, but I also perform the surgeries at
06 hospitals: Rhinelander hospital, St. Mary's hospital
07 in Rhinelander, and Langlade Memorial Hospital in
08 Antigo are the three locations where I provide
09 surgical services currently.

10 Q. You said -- you said Rhinelander --

11 A. St. Mary's Hospital in Rhinelander.

12 Q. Okay.

13 A. And the Aspirus Hospital in Antigo,
14 Wisconsin, are the current places where I do surgery.
15 Although, over the years, I've operated in different
16 locations.

17 I used to do surgery in Merrill,
18 Wisconsin. I used to do surgery in Stevens Point,
19 Wisconsin. But over the years -- our rotations have
20 shifted over the years for different locations. Not
21 every ophthalmologist goes to every location where
22 the eye clinic provides services.

23 Q. Okay. Understood.

24 You mentioned the ASC. Is that
25 ambulatory surgical center?

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01 A. Ambulatory surgery center.

02 We have our own now at our -- at the
03 Eye Clinic of Wisconsin that we opened a few years
04 ago.

05 Q. That is called the EC Laser --

06 (Admonition by court reporter.)

07 Q. What is it called?

08 A. It's, yes, the Eye Clinic of Wisconsin Laser
09 Surgery Center.

10 Q. Okay. So I'll probably just refer to that
11 as the "ASC" or the "surgery center" during the
12 course of the -- of the deposition, or "ECLSI."

13 A. Perfect.

14 Q. Okay. What percentage of your cases are
15 cataract surgeries?

16 A. I do more cataracts than any other surgical
17 procedure. But I also do corneal transplant, and I
18 do oculoplastic reconstructive surgery.

19 I would estimate that about 70 to 80
20 percent of my surgeries are cataract operations and
21 about 30 percent are other procedures.

22 Q. Okay. What percentage of your cataract
23 cases are billed to Medicare?

24 A. Those patients who are Medicare age and have
25 Medicare as their insurance are billed to Medicare.

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01 If people have private insurance, it's certainly
02 billed to their private insurance.

03 Some patients are self-pay. Some
04 patients have different benefits. So whatever
05 their -- their insurance is is who we bill it to.

06 And so if they have Medicare, we bill
07 to Medicare.

08 Q. Sure.

09 A. So all the patients who have Medicare as the
10 insurance are -- are billed to Medicare.

11 Q. Right.

12 So I'm asking roughly what percentage
13 of the cataract cases that you do are billed to
14 Medicare.

15 A. The majority.

16 Q. The majority --

17 A. Being over 50 percent for sure.

18 Q. -- over 50 --

19 (Admonition by court reporter.)

20 BY MR. SAMIE:

21 Q. 75 percent?

22 A. It --

23 MR. DIXON: Objection. Foundation.

24 THE WITNESS: It probably varies from
25 year to year. I don't know the exact number. But,

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01 certainly, the majority of people who develop
02 cataracts are in the Medicare age population. So
03 more of those people require cataract surgery than
04 people who are 40 or 50 years old.

05 BY MR. SAMIE:

06 Q. Okay. Do you seek approval from the federal
07 government to engage -- to bill Medicare for -- for
08 payment? Ps: 402/403,602

09 A. It -- that has varied over the years.

10 It used to be -- I've been in practice
11 for 30 years. And many years ago, every single
12 cataract had to be preapproved by Medicare before you
13 could schedule it. That's not currently the case.

14 I think the federal government found it
15 to be very cost-ineffective to do it because they
16 were approving essentially all of them as long as
17 they met the Medicare criteria.

18 There are certain criteria that have to
19 be met for you to do a cataract operation on a
20 Medicare patient: a certain level of visual acuity,
21 a certain number of complaints with regard to their
22 visual symptoms.

23 So there are criteria. And we know
24 those criteria. And we won't schedule someone -- I
25 tell patients all the time, "You don't meet Medicare

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01 criteria. So we -- we can't do your cataract surgery
02 at this point. We'll wait until it gets worse and
03 then perhaps come back in a year or so. Maybe your
04 vision will have fallen off to the point that you
05 qualify for Medicare cataract surgery."

06 Q. Sure.

07 So going back to my question is, do
08 you, though -- do you have to, as -- as a physician,
09 have to get approval from CMS to bill Medicare as a
10 provider?

11 Do you have to do some sort of an
12 enrollment form to become an approved provider to
13 bill Medicare?

14 A. Yes.

15 There -- there -- you certainly have to
16 have Medicare's requirements. You have to have
17 licensure, you -- state licensure. You have to, I
18 think, be enrolled in the Medicare program.

19 Some physicians have chosen not to
20 participate in Medicare. We participate with
21 Medicare at the eye clinic.

22 Q. Right.

23 In fact, you said a majority of your
24 cases are probably Medicare cases.

25 A. Majority of cataracts, yes.

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01 Q. And so when you are applying for approval to
02 be -- to bill Medicare, do you certify to Medicare
03 that you will not accept any sort of kickbacks in
04 conjunction with the claims that you submit to
05 Medicare?

06 A. I -- I don't know that -- that I've ever
07 seen any language like that, but that certainly would
08 seem logical.

09 Q. Okay.

10 A. I -- I'm not aware that -- any particular
11 language that says that, but maybe it -- maybe it's
12 out there someplace. I don't know.

13 Q. Do you believe you are not supposed to
14 accept any sort of kickbacks in conjunction --

15 MR. DIXON: Objection. Form.

16 THE WITNESS: Yeah, of course. I mean,
17 that would be wrong.

18 MR. SAMIE: Well, let me just finish my
19 question, please, before we get an objection.

20 BY MR. SAMIE:

21 Q. I was asking, do you believe that you are
22 not allowed to accept kickbacks in relationship to or
23 in conjunction with a claim that you billed to
24 Medicare?

25 MR. DIXON: Objection. Form.

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01 THE WITNESS: I think there are some
02 nuances with regard to Medicare's billing practices.
03 And I can give you a specific example.

04 When an optometrist sees a patient who
05 has a cataract and sends the patient to me for a
06 cataract operation, there's a way that it's billed as
07 co-management.

08 And I do some someone's cataract
09 surgery, sent by a local optometrist who might be in
10 the UP. I do that cataract operation in Wausau or
11 Rhinelander. And then the patient indicates -- they
12 fill out a form pre-operatively that says, "I want my
13 postoperative care provided by my optometrist."

14 And we fill out paperwork, and the
15 optometrist gets paid 20 percent of the surgical fee.
16 It's a legalized kickback that the government has
17 sanctioned, essentially, for an optometrist to do
18 postoperative care and get paid for it.

19 BY MR. SAMIE:

20 Q. Okay.

21 A. So I think that's a bit of a kickback to an
22 optometrist referring, which I don't like. I think
23 it's a bad federal policy, but it exists, and we do
24 participate in it.

25 Q. Okay. But, generally speaking, kickbacks

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01 like gifts that you would be receiving or things of
02 that nature, do you believe that you're supposed to
03 be accepting --

04 A. Of course not.

05 Q. -- accepting those types of --

06 Do you believe that you're supposed to
07 be accepting those types of kickbacks in conjunction
08 with your Medicare service?

09 MR. DIXON: Objection. Form.

10 THE WITNESS: Certainly not.

11 BY MR. SAMIE:

12 Q. Okay. And do you understand that Medicare
13 claims would not be payable if -- if they were
14 tainted by illegal kickbacks that you received?

15 MR. DIXON: Objection. Foundation.

16 THE WITNESS: Yeah. That makes
17 sense.

18 BY MR. SAMIE:

19 Q. Okay. So from 2013, the beginning of 2013
20 to the present time, have you been performing the
21 majority of your surgeries at the ASC ECLSI?

22 A. Almost every surgery I do in Wausau is done
23 at the ASC.

24 The only times I operate at the
25 hospital are when I'm on call and there's an

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01 emergency situation where someone comes in with
02 trauma and the patient is admitted as an inpatient to
03 the hospital.

04 And I have to still perform surgery at
05 the hospital occasionally, rare occasions. But, yes,
06 elective surgery done in Wausau, all of it's done at
07 the ASC.

08 Q. Okay. So the majority of the cataract
09 surgeries you perform are performed at the ASC?

10 A. All the cataract surgery I perform in Wausau
11 is performed at the ASC.

12 Q. When we -- when you lump in all of the
13 cataract surgeries that you do generally, are the
14 majority of those done at the ASC?

15 A. Yes.

16 Q. Okay.

17 A. I have much more operating time in Wausau
18 than I do in the satellite offices.

19 Q. Before 2013, say from 2006 to 2012, the
20 majority of the cataract surgeries you performed,
21 those were at the Wausau Surgery Center?

22 A. Yes. In Wausau.

23 Q. Okay. And you mentioned that the -- the
24 A- -- the ASC ECLSI, that is -- that was created by
25 surgeons with the ECOW; right?

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01 A. Right. We own it.

02 Q. When -- when you were at -- when you were
03 doing surgeries at the Wausau Surgery Center, did you
04 play any role in deciding what intraocular lens you
05 would use in your surgeries, your cataract
06 surgeries?

07 A. The surgeon always has the choice of what
08 lens to use.

09 Q. Okay. Did you also play a role in
10 negotiating what the price of that lens would be when
11 you were at the Wausau Surgery Center?

12 A. I -- I never had any price negotiation with
13 anyone.

14 I -- as a group, we always tried to get
15 the best prices for our patients on everything.

16 Q. So as a -- as a group -- but you were
17 operating at the Wausau Surgery Center; right?

18 A. Right.

19 Q. And there were a number of different players
20 at that facility; right?

21 A. Right.

22 It was a multi-specialty facility,
23 where they did ear, nose and throat surgery, plastic
24 surgery --

25 Q. Sure.

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01 A. -- general surgery, eye surgery. They did a
02 number of other -- a number of other procedures.

03 Q. Okay. So --

04 A. I -- I had no decision-making in terms of
05 what they were negotiating.

06 We -- we tried to be advocates for our
07 patients, wherever we worked, to try to get the best
08 prices for our patient.

09 We would -- we would say, "Maybe you
10 could approach them and see if you can get a better
11 deal on the lenses," you know. To -- talk to the
12 management of the surgery center to have them
13 negotiate for the pricing --

14 Q. Okay. So the management --

15 A. -- with the distributors.

16 Q. So the management for the surgery center
17 was -- those were folks that were outside of ECOW --

18 A. Yeah. Not our employees --

19 Q. -- not your people.

20 A. -- no.

21 Q. And they were the ones that --

22 MR. DIXON: Wait. We have to slow down
23 for the court reporter here so we get a good record
24 and I have an opportunity to ask -- to say
25 objections. So please slow down. Okay?

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01 THE WITNESS: Okay.

02 I'm sorry. I speak rapidly.

03 MR. DIXON: That's okay.

04 BY MR. SAMIE:

05 Q. The people -- the management that was making
06 the ultimate purchasing decisions, those were not --
07 at the Wausau Surgery Center, those were not ECOW
08 people.

09 A. Correct.

10 Q. Okay. And so those were -- those
11 people were the ones negotiating the price of the
12 products that were -- that were ultimately used in
13 these surgeries that you were performing.

14 A. Yes.

15 Q. And that your colleagues -- your ECOW
16 colleagues were performing.

17 A. Yes.

18 Q. Okay. And that includes cataract surgeries?

19 A. Yes.

20 Q. Okay. And that includes both intraocular
21 lenses as well as viscoelastics?

22 A. Yes.

23 Q. Okay. So would you advise those management
24 folks and would your colleagues -- well, let's just Ps: 402/403
25 start with you.

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01 Would you advise those management folks
02 what intraocular lens you preferred to use, and then Ps: 402/403,
03 they would go out and negotiate the price that would 25:1-25:25
04 be obtained?

05 A. I've used lenses from a manufacturer that
06 used to be known as Allergan since I came back and
07 start practicing in the Wausau.

08 I've tried a few other brands over the
09 years, but I've been very satisfied with that
10 particular type of lens, that design of lens.

11 That particular company has gone
12 through several iterations: It was Allergan Medical
13 Opticals, then it became Abbott, and now that lens
14 that I use is -- Johnson & Johnson owns the company.

15 So it's -- but it's essentially just
16 different generations of that same lens. And I got
17 introduced to it during my fellowship, and I liked
18 it.

19 And I've got good -- we track our
20 outcomes. And you want to have predictability for
21 your patients.

22 Q. Sure.

23 A. So based on outcomes, I've been happy with
24 the results of that lens. So it's -- I've used it
25 for many, many years.

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01 [REDACTED] When we first started in Wausau, there
02 was -- the lens came, I think, from a different [REDACTED]
03 distributor. I mean, Precision Lens wasn't even in [REDACTED] Ps: 402/403
04 the picture years ago. And then they became the [REDACTED] 26:1-7
05 distributor for it, and that's how we got involved
06 with them selling the lenses to the places we
07 worked.

08 Q. Right. Okay. We're jumping all over the
09 place.

10 A. Okay. Sorry.

11 Q. So just try to answer the question that
12 I'm -- that I'm asking.

13 A. I'm trying.

14 Q. No. And I appreciate that. It -- I just [REDACTED] Ps: 402/403
15 want to kind of stay on track here. [REDACTED] 26:14-25
27:1-4

16 [REDACTED] So the lens you're referring to, that's
17 the Z9 -- [REDACTED]

18 A. The current lens, the designation is the
19 Z9002. [REDACTED]

20 Q. Okay. And it's had that name for quite some
21 time? [REDACTED]

22 A. For some years. [REDACTED]

23 [REDACTED] But it -- there was -- initially, it
24 was called an SI18, then an SI30, then an SI40. [REDACTED]

25 Then a -- a -- and it's -- I -- I can only think of [REDACTED]

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01 the -- the name we -- we jokingly called it. But

02 there was another --

03 Q. Okay.

04 A. -- variant of it and then now the Z9002.

05 Q. So -- so this is your lens that you -- of
06 choice; right?

07 And my question is, you would then
08 relay that preference to -- and this is -- let me
09 just back up.

10 While you were at the Wausau Surgery
11 Center performing surgeries there, this lens was your
12 lens of choice. You would relay that information to
13 the management folks for the Wausau Surgery Center,
14 that this is what you wanted to use, and then they
15 would go out and negotiate the price for that?

16 A. I would not relay it.

17 I would choose the lens in my office.
18 My staff would give us printouts, calculated powers,
19 to predict what power lens would be appropriate for
20 the patient based on the length of their eye, the
21 shape of their cornea, and how they want to see
22 afterwards: if they want good distance vision, close
23 vision, what their preference is.

24 And I would choose the power of the
25 lens. The lens type is chosen. I would choose the

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01 power of the lens, and then that -- my office would
02 relay that to the surgery center, saying "Please
03 order these lenses for Dr. Flaherty's cases coming up
04 on such and such a date."

05 Q. Okay.

06 A. That's how it worked.

07 Q. But those -- they didn't negotiate a price
08 per surgery.

09 A. No. I don't -- I don't believe so.

10 Q. Okay. So there was a negotiated price with
11 the vendor as to what --

12 MR. DIXON: Ob- --

13 BY MR. SAMIE:

14 Q. -- this generally would cost?

15 MR. DIXON: Objection. Foundation.

16 BY MR. SAMIE:

17 Q. It was -- please answer.

18 A. It -- they -- yes, I'm sure they had a -- a
19 negotiated price.

20 Q. Okay. And so -- and you didn't play a role
21 in that --

22 A. I did not.

23 Q. -- price negotiation.

24 Okay. The same -- is the same true for
25 the visco that you would use?

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01 A. The same is true.

02 Q. Okay. Did ECOW have any sort of contracts
03 or agreements with Precision Lens about what lenses
04 it would use for surgeries at the Wausau Surgery
05 Center?

06 A. Not that I'm aware of.

07 Q. Okay. Did it have any contracts or
08 agreements with Precision Lens about what
09 viscoelastic would be used -- or viscoelastics would
10 be used for surgeries at the Wausau Surgery Center?

11 A. Not to my knowledge.

12 Though I do know that we did try to --
13 we tried different viscoelastics over the years in
14 different locations.

15 Like, when Ascension bought St. Mary's
16 Hospital in Rhinelander, they wanted to change
17 viscoelastics, just like they wanted to change
18 lenses. And so we had to bring it forward if we
19 wanted to use a product that we thought was inferior.

20 They -- I mean, just crazy little
21 stuff. They changed the gloves, the masks, hats.

22 Q. So those kinds of decisions, the
23 viscoelastics to use, was that a clinic-wide decision
24 that you would make a decision, these viscoelastics
25 we would use, and everyone would use those?

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01 MR. DIXON: Objection. Form.

02 THE WITNESS: No. Because different
03 surgeons use different viscoelastics from time to
04 time.

05 One of my colleagues, who's retired
06 now, Dr. Parmley, he used a viscoelastic that I
07 didn't think protected the cornea as well. And he
08 chose to use it. You know, I don't know why he liked
09 it. I think it was -- there was more in the syringe
10 or something. So he had more of the medicine in case
11 he needed it during his surgeries. So he had a
12 larger supply of viscoelastic to use during his
13 surgeries.

14 I didn't feel we needed that much. And
15 I liked the protection that the viscoelastics that I
16 was using provided.

17 BY MR. SAMIE:

18 Q. Okay. What about from the -- the vendor?
19 Did -- from 2006 to 2013 -- excuse me, to the end of
20 2012, during your time at the -- performing surgeries
21 at the Wausau Surgery Center, did -- did your
22 practice only use viscoelastics that were obtained
23 through Precision Lens?

24 A. I don't know.

25 Q. What about you?

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01 A. I don't know, either. I don't know where
02 the viscoelastics came from that I was using all the
03 time. I really don't.

04 Q. What viscoelastics were you using during
05 that time period?

06 A. One called DuoVisc.

07 Q. Who makes that?

08 A. I think that might be Alcon.

09 Q. Okay. And what -- how long did you use that
10 for?

11 A. I -- I used it for a long time. Many
12 years.

13 Q. When did you stop?

14 A. When they got something that was equivalent.
15 HEALON EndoCoat and HEALON GV.

16 Q. So --

17 A. And that's a -- it's -- I use two different
18 viscoelastics during surgery. There's a --

19 Q. Sorry.

20 A. There's one type that protects the cornea at
21 the beginning of the case --

22 Q. Uh-huh.

23 A. -- and there's another type that you use to
24 balloon up the capsular bag before you put the lens
25 in.

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01 So there are two different types:

02 one -- one is a cohesive viscoelastic, one is a
03 dispersive viscoelastic.

04 Q. Right. Right.

05 A. So there's two different products.

06 Q. Okay. So the -- and the DuoVisc provides
07 for both of those.

08 A. Right.

09 Q. Right. Okay.

10 And then --

11 A. Two different products.

12 Q. Two different -- two different products, but
13 it's the same --

14 A. I think they're --

15 Q. -- box.

16 A. They come in a box, yeah, bundled
17 together.

18 Q. Okay. And so at some point, you switched
19 from the DuoVisc to this HEALON EndoCoat product?

20 A. That's what I'm using now.

21 Q. That -- and you've been using that since?

22 A. Yeah.

23 Q. Okay. And -- and that -- you switched when
24 that product came on the market?

25 A. I -- I don't remember exactly what I

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01 switched. I just know that I always wanted a good
02 cohesive and a good dispersive viscoelastic --

03 Q. Sure.

04 A. -- together.

05 And I left it to the surgery center in
06 Wausau or our ECLSI to tell me whatever they can get
07 the best deal on.

08 I don't -- I'm not -- I wasn't
09 negotiating prices. I just wanted to have a good
10 product to use for my patients.

11 Q. No. I understand that.

12 But -- but you -- but you were using
13 this when it -- when it came on the market. That's
14 when you -- I think that's what you --

15 A. When what came on the market?

16 Q. That -- sorry. That was a terrible
17 question. I'll strike that.

18 So the HEALON EndoCoat product, that
19 visco, you switched over to that once that became
20 available?

21 A. I don't know when it became available.

22 Q. I'm not asking when it came available.

23 I'm asking, did you make the switch
24 when it came available?

25 MR. DIXON: Objection. Form.

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01 THE WITNESS: I -- obviously, I'm using
02 it; so it's available.

03 So I -- but I didn't -- I don't know --
04 I -- I switched when they -- when the ASC and the
05 surgery center said, "We've got" -- you know, "Try
06 this. You know, it's -- it's going to cost us less
07 money. We'll" --

08 And -- and I tried it on a couple
09 cases. Yeah, corneas look great the next day. I'm
10 happy to use it.

11 BY MR. SAMIE:

12 Q. And you've been using it ever since.

13 A. Yeah.

14 Q. Okay. Did your colleagues do the same
15 thing?

16 A. I think some of them have. I don't know
17 what they all use.

18 Like I said, one of my colleagues,
19 who's now retired, he used a product that I thought
20 was inferior.

21 Q. Do you know what Dr. Hattenhauer used?

22 A. I -- I don't.

23 I -- I know he's used DuoVisc. And I
24 think -- I know he uses -- I think he uses two
25 different products, like I do. I'm quite sure of

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01 that. But I'm not sure.

02 Q. In the sense that he uses the --

03 A. A cohesive and a dispersive --

04 Q. -- cohesive and --

05 A. -- viscoelastic.

06 MR. DIXON: I'm going to --

07 (Admonition by court reporter.)

08 MR. SAMIE: I'll try to help as well.

09 BY MR. SAMIE:

10 Q. The -- Dr. Hattenhauer uses both a cohesive
11 and a dispersive visco?

12 A. I believe so.

13 Q. Okay.

14 A. I think -- I know you're going to have an
15 opportunity to talk to him. You can ask him.

16 Q. Okay.

17 Dr. Edwards, do you know what visco he
18 uses?

19 A. I think he also uses a dual product.

20 Q. And does he use the HEALON EndoCoat
21 product?

22 MR. DIXON: Objection. Foundation.

23 THE WITNESS: I -- I don't know for
24 certain. I believe so.

25 BY MR. SAMIE:

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01 Q. Okay. And would he have made that switch
02 around the same time you made that switch?

03 A. I have no idea.

04 Q. Well, you indicated that some of
05 your partners --

06 A. Do you want me to speculate?

07 Q. Well, I think you said that some of your
08 partners made that switch around that same time.

09 MR. DIXON: Objection. Misstates --

10 BY MR. SAMIE:

11 Q. So I'm just asking.

12 A. I --

13 MR. DIXON: Objection. Misstates the
14 testimony. Objection. Form.

15 THE WITNESS: I -- I -- I don't know
16 a -- when any of my colleagues started using a
17 product.

18 What we typically do at our AC -- and I
19 only speak to what we do at our AC -- is we try to
20 track the cost of care. We track what a lens costs,
21 what viscoelastic costs, how much time in the OR,
22 what drugs are used. And we try to make it as
23 cost-effective for every patient.

24 So we -- we look at the cost per case
25 for every surgeon. And we try to keep the costs in

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01 line for every surgeon so that we -- we don't
02 overspend.

03 BY MR. SAMIE:

04 Q. The -- the HEALON EndoCoat product, that is
05 a product that was manufactured by AMO?

06 A. I don't know if -- if Abbott was the
07 manufacturer or Allergan. I don't know who the
08 manufacturer is.

09 Q. Okay. But it's -- it's within that chain,
10 the Allergan, AMO, Johnson & Johnson?

11 A. I believe so.

12 Q. Okay. And was that -- has that product
13 always been provided, for your surgeries, through
14 Precision Lens?

15 A. I don't know.

16 Q. Do you know, for any period of time, if
17 Precision Lens was providing that product?

18 A. I -- I know that Precision Lens did provide
19 viscoelastics to us. But I don't know what time
20 period, what volume, what products exactly. I
21 don't.

22 Q. Okay. So moving on to the surgical center,
23 which -- which you all built, the ECOW built --
24 right? -- did Precision Lens supply the HEALON
25 EndoCoat viscoelastic to ECOW for those surgeries?

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01 A. I -- I don't know for certain, but I believe
02 that many of the products we used in surgery come
03 from Precision Lens.

04 They are -- have been a reliable
05 distributor, supplier for us. They're close
06 geographically, in Minneapolis. We can get a lens at
07 the last, you know, minute.

08 Say, "We got a case added on tomorrow.
09 Can you get us a lens over here tomorrow?" So
10 they've been very reliable in getting us products in
11 a timely fashion.

12 Q. Okay. Since you started -- and I'm focusing
13 this on intraocular lenses and viscoelastics.

14 A. Uh-huh.

15 Q. But since your time at ECLSI, doing
16 surgeries there, have you used predominantly products
17 that were manufactured by AMO?

18 A. Predominantly; though sometimes you need a
19 specialty lens that they don't have or --

20 Q. Understood.

21 A. Yeah.

22 So I'd say the majority -- my -- my
23 first-choice lens for routinely cataract surgery is
24 the lens that was previously Allergan, the name, now
25 Johnson & Johnson.

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01 Q. Okay. Is your understanding that Precision
02 Lens is the exclusive provider or distributor for AMO
03 products?

04 A. I think they were.

05 I don't know if they still are, but I
06 believe they were.

07 Q. Okay. At least through the end of 2015,
08 they were?

09 A. I -- I believe so.

10 When -- when --

11 Q. Okay.

12 A. When I began, they -- I don't think they
13 were. But that's 30 years ago.

14 Q. And we're not going to go back that far.

15 Well, actually, now that you brought
16 that up, how did they come -- do you know how they
17 came to become the distributor of that product?

18 A. I don't.

19 I think it's interesting that one of
20 the early employees of Allergan subsequently ended up
21 working for Precision Lens many, many years later.

22 Q. Who's that?

23 A. Gary Scheidegger.

24 Q. Gary Scheidegger, okay.

25 A. Yeah. It was weird.

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01 But he was selling us lenses when I

02 started in the late '80s. And then I believe --

03 Q. For Allergan?

04 A. For Allergan.

05 And then Precision Lens, I -- became

06 the sole distributor, I believe, for the lens that I

07 wanted. So we had to go through Precision Lens.

08 Q. Roughly when did that happen?

09 A. Probably in the '90s. Sometime in the

10 '90s.

11 Q. '90s? Okay.

12 And that was -- that's -- that's been

13 the case, as far as you know, since then?

14 A. (Nods head.)

15 Q. Okay.

16 I'm sorry. Yes?

17 We need an audible answer.

18 A. Yes.

19 Q. Yes, okay.

20 When did you first meet Paul Ehlen?

21 A. I don't remember.

22 I've known Paul for -- it's got to be

23 20 years. A long, long time. I think close to 20

24 years.

25 I remember meeting him at -- at -- at

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01 an American Academy of Ophthalmology convention.

02 I think he probably just showed up at
03 the clinic; said, you know, "I'm going to be your
04 distributor of lenses now."

05 I don't -- I don't really recall the
06 first time I met him. I just -- I've known him a
07 long, long time.

08 Q. Okay. But you met him through a
09 business-related --

10 A. Yes. Through --

11 Q. -- event.

12 A. He either called on the clinic, saying, "I'm
13 going to be providing lenses, you know, for these
14 companies."

15 But then I -- you know, the -- the reps
16 would be at the annual meeting -- at the meetings
17 too, whether it be an annual meeting for the eye
18 societies or it would be national meetings.

19 So I really don't remember the first
20 time I met him.

21 Q. You would -- you wouldn't have met him if
22 you weren't an ophthalmologist.

23 MR. DIXON: Objection. Foundation,
24 form.

25 THE WITNESS: I don't know. Though --

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01 I don't know if I would have met him.

02 BY MR. SAMIE:

03 Q. It's unlikely?

04 MR. DIXON: Objection. Form.

05 THE WITNESS: I -- I'm not sure if
06 it's even that unlikely, because one of his
07 associates is a friend of my brother-in-law over in
08 Minnesota, and they play golf together.

09 BY MR. SAMIE:

10 Q. Okay. Has Precision Lens or Paul Ehlen ever
11 taken you on a trip?

12 A. I have traveled with Paul and Pete before.
13 I would -- so I've flown on Paul's plane before.

14 But I would say -- taken me on a trip?
15 We shared a trip. I -- I would say, more precisely,
16 Paul and Pete joined our guys' ski trip for a couple
17 of years.

18 Q. Okay. And you say "Pete," is that
19 Pete Gosz?

20 A. Pete Gosz.

21 Q. All right. And Pete Gosz was a -- in a
22 sales capacity for Precision Lens?

23 A. He worked -- he worked with Paul at
24 Precision, that's right.

25 Q. And he -- he was the main salesperson that

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01 was working with your clinic?

02 A. I -- I saw Pete more than I saw Paul. He
03 would show up at our -- the -- to bring stuff over to
04 the clinic, yes.

05 Q. Okay. Was your interaction, as far as with
06 Precision Lens folks, predominantly with -- with
07 those two individuals?

08 A. Yes.

09 Q. So you said that this trip that you've --
10 you've traveled together with -- with them.

11 A. I have.

12 Q. Okay. So how many times have you traveled
13 with anyone from Precision Lens?

14 A. Well, probably -- I -- well, I've played
15 golf with Pete Gosz. He came over here. I took him
16 to the country club and played golf with him on -- on
17 my expense in Wausau.

18 I've driven him up to my house before;
19 you know, I've taken Pete and Paul to my house for
20 drinks and food.

21 So I've known them for a lot of years.
22 I've traveled on Paul's plane to Colorado skiing with
23 Pete.

24 Q. Well, let's say this: How many times have
25 you gone out of state, out of the state of Wisconsin,

Ds: 403/
sanctions,
43:24-44:18

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01 with -- with Paul Ehlen, with anyone from

02 Precision Lens?

03 A. I would say probably four times, maybe five
04 times.

05 Q. Okay. What --

06 A. We --

07 Q. What were those four times or five times?

08 A. Well, many, many years ago, Paul flew over
09 here to Wausau. And he had just gotten a new plane,
10 and we flew to Chicago together.

11 This was before Meigs Field was
12 destroyed. So that would be about 2000 and -- I
13 don't know. I think Meigs went -- when did it go
14 down? 1999 or something like that?

15 We flew to Chicago together years ago.

16 I've traveled commercially with Pete to
17 go skiing; commercial air travel. And I've been on
18 Paul's jet a couple times to go to Colorado.

19 Q. Okay. So I have this trip to -- you flew to
20 Chicago with Paul.

21 Was that on a commercial flight?

22 A. No.

23 He had just gotten a new jet.

24 Q. This was his new jet?

25 A. Yeah.

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01 And he was having fun with it.

02 Q. Okay.

03 A. Said, "Let's -- let's fly to Chicago."

04 Q. And you think that was in the early 2000s?

05 A. No. It was -- well, Meigs Field was still
06 in operation.

07 I think it was probably -- I think it
08 was probably 1997 --

09 Q. Okay.

10 A. -- '98. Something like that.

11 Meigs Field was destroyed in the middle
12 of the night by the mayor.

13 Q. Okay.

14 A. And we landed at Meigs Field.

15 Q. The -- and then you traveled commercial with
16 Pete Gosz --

17 A. Uh-huh. We went skiing in Colorado.

18 Q. How many times?

19 A. Well, we didn't -- we -- just when -- one
20 time, he -- he flew out to Color- -- well, we didn't
21 travel together. But we were -- we were on the same
22 flight from, like, Minneapolis one time. I was on
23 the same flight with him from Chicago one time coming
24 home from a meeting.

25 But, I mean, we weren't -- we didn't --

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01 he didn't pay for my ticket. I didn't pay for his
02 ticket. We just traveled on the same plane.

03 Q. Yeah.

04 And I'm trying to identify --

05 A. Yeah.

06 Q. -- how many different --

07 A. Yeah.

08 Q. -- times you guys went on a trip together --
09 right? -- so --

10 A. We were going to the same meeting. That was
11 at the -- like, the academy in Chicago one time. I
12 think maybe New Orleans. We were coming back from
13 New Orleans one time, we were on the same flight.

14 Q. But --

15 A. But we weren't traveling together --

16 Q. All right. I --

17 A. -- we just were coming back at the same
18 time.

19 Q. -- I understand that.

20 A. Yeah.

21 Q. Is that -- the -- so the Chicago -- you once
22 both flew to the same event in Chicago. That was an
23 academy event. Is that -- is that accurate?

24 A. No -- well, yeah. I mean, we've been to the
25 academy event.

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01 But the -- the reference I was talking
02 about, when we flew down to Chicago, that was just
03 went down there and just had dinner and hung around
04 one day, one night.

05 Q. Okay. So you and Mr. Gosz flew out to
06 Chicago -

07 A. No.

08 Pete -- Paul -- Pete was not on that.

09 Q. Oh, you --

10 A. Just Paul --

11 Q. -- and Paul, okay.

12 A. -- Paul and his wife, Katie; my wife and --

13 Q. This is the Meigs Field trip?

14 A. Yeah.

15 Q. Okay. All right.

16 A. 1997.

17 Q. Sure.

18 Past -- and I'm moving past that.

19 A. Yeah.

20 Q. I'm talking about the -- the commercial
21 travel with Pete that you brought up.

22 How many times did you do commercial
23 travel with Pete Gosz?

24 MR. DIXON: Objection. Form.

25 THE WITNESS: When we went skiing

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01 together in Colorado on another men's trip when Paul
02 didn't go.

03 BY MR. SAMIE:

04 Q. When was that?

05 A. Probably a couple years after these trips
06 that you referenced.

07 Q. So --

08 A. Probably 2013.

09 The -- the things that's -- the -- the
10 facts is that we've gone skiing with a group of guys
11 many, many times for many years.

12 Q. We're going to get to this.

13 A. And this was -- this was one of the times
14 I'm referencing, when we were going out to go skiing.
15 And Pete flew commercial, I flew commercial, Matt
16 flew commercial --

17 Q. Sure.

18 A. -- to go to the same -- same guys' event.

19 Q. Okay. And we'll get to that.

20 A. Okay.

21 Q. I'm just trying to identify the different --

22 A. All right.

23 Q. -- the different trips so we get a grasp.

24 A. Sure.

25 Q. And then I'm going to do a deep dive into

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01 some of these.

02 So other than this ski trip that
03 Pete Gosz came on that Paul Ehlen wasn't present
04 for --

05 A. Uh-huh.

06 Q. -- were there any other trips or travel that
07 you took with Pete Gosz?

08 A. No.

09 Q. Okay. Are there any other -- well, and then
10 you mentioned the -- Paul's jet to Colorado. That's
11 the part --

DS: 403/
sanctions,
49:09-49:25

12 A. That's -- that's the ski trips that you're
13 going to talk to me about later.

14 Q. And those are in 2010 and 2011?

15 A. Correct.

16 Q. January of 2010, January of 2011?

17 A. Correct.

18 Q. Did you ever take any other trips on -- on
19 Paul Ehlen's plane?

20 A. No. Just those two.

21 Q. Just those two and the Chicago one?

22 A. Right.

23 Q. Those are the only three times you've ever
24 been on a Paul Ehlen plane?

25 A. One of his planes, yes.

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Ds: 403/sanctions Page 501-

50:23

01 Q. One of his planes, okay.

02 Did you take any other trips with

03 Paul Ehlen to Beaver Creek in Colorado other than the

04 2010 and 2011 trips?

05 A. Yes, I believe I did.

06 Q. When were those?

07 A. Not sure of the years.

08 Q. Okay. Did you take any other trips to -- to

09 Beaver Creek with Pete Gosz other than the 2010, the

10 2011, and then this one that you said happened a

11 couple years ago?

12 A. I believe Pete went skiing with us twice

13 when Paul was not there.

14 Q. Twice when Paul was not there?

15 A. Yeah.

16 Both times on commercial -- commercial

17 flights for him.

18 Q. And one time, you said, was after the 2010

19 and 2011 trips. What about the other?

20 A. I think they were probably -- I think they

21 were probably both after.

22 Q. Both after?

23 A. Yeah. I do believe so.

24 Q. Okay.

25 A. I'm -- it's -- I mean, we're talking eight,

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01 nine years ago.

02 There's a big group of guys. And
03 sometimes the makeup would change from year to year.
04 So I don't -- you know, Pete and Paul just happened
05 to join our group a couple of years.

06 Q. Okay. The -- so other than these trips that
07 you identified, can you think of any other trips or
08 travel that you took with somebody from
09 Precision Lens?

10 A. No.

11 Q. Okay.

12 A. None.

DS: 401/403/
sanctions, 52:15-
54:08

13 Q. What about hunting in White Lake?

14 A. Never done it.

15 Q. You've never gone hunting with Paul Ehlen

16 or --

17 A. Never have. Nope. Never.

18 Q. Have you ever gone fishing?

19 A. Never have. Not with Paul Ehlen.

20 Q. Have you ever gone fishing with anyone with

21 Precision Lens?

22 A. No.

23 Q. Okay. Have you ever gone to the Big

24 Narrows --

25 A. No.

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01 Q. -- for a fishing trip?

02 A. No.

03 Q. All right. So this is going to sound a
04 little weird to you, but I'm showing you Exhibit 18.

05 MR. SAMIE: 18 is what we're on?

06 (Exhibit 18 marked for
07 identification.)

08 MR. DIXON: 18?

09 MR. SAMIE: Yeah.

10 BY MR. SAMIE:

11 Q. Have you seen this document before?

12 A. No. I don't remember seeing it.

13 Q. What's that?

14 A. I don't remember ever seeing it before.

15 Q. Okay. So this is a letter that's dated from

16 January 31, 2005, and it's addressed to you from

17 Pete Gosz.

18 A. Uh-huh.

19 Q. Did you periodically receive letters from

20 Mr. Gosz?

21 A. I -- I don't recall receiving a letter from

22 him.

23 Q. You don't recall receiving any letters from

24 him --

25 A. I don't.

Ds: 401/403/
sanctions, 52:15-
54:08

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01 Q. -- at any time?

02 A. I don't.

03 But I'm -- I don't process my mail very
04 well, as anyone in my office can attest.

05 Q. Okay. Do you think that it's possible that
06 this was drafted and sent to you?

07 A. It is possible, yeah.

08 Q. Okay. So getting into the content here, it
09 says, "Kevin: It was such a great time in Beaver
10 Creek. It's truly the only way to travel."

11 Do you -- so this being dated
12 January 31, 2005, did you take a trip with Pete Gosz
13 to Beaver Creek sometime before this date?

14 A. I -- possibly.

15 Q. Possibly?

16 A. I mean -- yeah. I mean, probably, I would
17 say. Based on this, I must have.

18 Q. Okay. So when do you think that would have
19 been?

20 A. Probably January of '05.

21 Q. January of '05.

22 A. We -- when we traveled, we put this guys'
23 trip together, it was almost always early January --

24 Q. Okay. So --

25 A. -- when we did these guys' trips, like I

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01 said, for many years.

02 Q. So it says "It is truly the only way to
03 travel."

04 Do you remember anything about how you
05 would have traveled to get there that would have been
06 noteworthy?

07 A. You know, I can speculate if you want me
08 to.

09 MR. DIXON: Objection. Form.

10 BY MR. SAMIE: Ds: 401/403, sanction
54:10-54:18

11 Q. Please.

12 A. You know, possibly we went with Paul that
13 time.

14 Q. It's possible that you did do a trip earlier
15 with Paul Ehlen?

16 A. Very possible, yeah.

17 Q. And -- and that you may have also gone on
18 his private -- private plane at that time?

19 MR. DIXON: Objection. Form.

20 Foundation.

21 THE WITNESS: It -- it's definitely Ds: 401/403,
22 possible, yeah. sanction

23 Like I said, I -- I've skied with --
24 with them several times over the years.

25 BY MR. SAMIE:

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01 Q. You've skied with them several times over
02 the years.

03 But you think it's possible that you
04 may have gone with Paul Ehlen one more time, in
05 addition to the 2010 and 2011 trips that we've
06 identified?

07 MR. DIXON: Objection. Form.

08 THE WITNESS: Very -- very -- very
09 possibly, yeah.

Ds: 401/403,
sanction
55:08-55:09

10 BY MR. SAMIE:

11 Q. Okay.

12 A. Yeah.

13 Q. And that -- also on one of his private
14 planes?

15 A. Probably.

16 Q. Okay. So there's -- the next paragraph, "I
17 truly appreciate all your business support."

Ds: 401/403,
sanction
55:16-55:20

18 What did you understand that to mean?

19 A. That he's glad that we do business with
20 Precision Lens.

21 "Moreover, your friendship."

22 Q. Okay.

23 (Exhibit 19 marked for
24 identification.)

25 BY MR. SAMIE:

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01 Q. Showing you Exhibit 19. So this is another
02 letter.

03 Do you recall seeing -- receiving this
04 letter?

05 A. No, I don't.

06 Q. Okay. But, again, same questions: Do you
07 think it's possible that Mr. Gosz --

08 A. I'm sure he sent it if it -- if there's a
09 record.

10 MR. DIXON: Objection. Foundation.

11 BY MR. SAMIE:

12 Q. Okay. It's likely that you may have
13 received the letter and then, at some point, tossed
14 in the waste basket.

15 MR. DIXON: Objection. Foundation.

16 THE WITNESS: I don't know if I
17 received it or not.

18 BY MR. SAMIE:

19 Q. Okay. So this is dated May 12, 2006. And
20 the -- so the Bates number on this is PL0042521.

21 MR. SAMIE: And just for the record, 18
22 was -- or excuse me. 17 was PL0042349.

23 BY MR. SAMIE:

24 Q. Do you usually save your correspondence that
25 you get?

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01 A. No.

02 Q. No.

03 What is your general practice with mail
04 that you get?

05 A. In the garbage can.

06 Q. Yeah. I'm the same way.

07 "Kevin" -- looking at this -- looking
08 at this letter here, it says, "Kevin:" -- and it's --
09 again, this is from Pete Gosz. "It was a pleasure
10 visiting with you at dinner. Thank you for bringing
11 the photos from Beaver Creek. I really appreciated
12 that."

13 So this is now 2006 in May. It sounds
14 like you went to dinner with Mr. Gosz.

15 MR. DIXON: Objection. Form.

16 THE WITNESS: I must have.

17 BY MR. SAMIE:

18 Q. Okay. And it's referring to photos from
19 Beaver Creek.

20 Is it possible that -- that you went on
21 a trip earlier in 2006 with Mr. Gosz to Beaver Creek?

22 A. I don't know if I did or not.

23 I -- I've gone skiing almost every
24 January for many, many years. And like I said, Pete
25 and Paul came on a couple of our guys' trips --

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01 Q. Uh-huh.

02 A. -- and he may have been on a trip.

03 There was a memorable photo that I took
04 of Pete with a professional golfer, Phil Mickelson.
05 We saw him at lunchtime. And there was a picture of
06 the two of them together that I had framed and gave
07 to Pete --

08 Q. Oh, that's nice.

09 A. -- of he -- he and Phil Mickelson at a
10 lunch -- at a lunch restaurant called Beano's.

11 Q. Do you think that that might have been the
12 picture that he's talking about here?

13 A. Probably.

14 Q. Okay.

15 A. Because I -- I had it made in an 8-by-10 and
16 gave it to him.

17 Q. Okay. And so you would have had time, from
18 a January photo being taken, to get this to him by
19 May.

20 MR. DIXON: Objection. Foundation.

21 THE WITNESS: I -- yes. I mean, unless
22 I was really lackadaisical.

23 BY MR. SAMIE:

24 Q. Sure.

25 So this one, though, doesn't mention

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01 anything about the only way to travel.

02 Do you remember anything about if

03 Paul Ehlen was on that trip?

04 A. I -- I don't. I really don't recall.

05 Q. Do you remember how you got there?

06 A. I -- I don't even know for certain that this
07 was the year that -- that there were -- they were
08 another -- a trip with us. I don't.

09 Q. Okay. So it says here, in the next
10 paragraph, "I am hoping that our ideas of Viscoat to
11 Amvisc will work for you."

12 What do you understand that to mean?

13 A. It looks like he's trying to get me to
14 switch from a product that -- that I'm using, the --
15 like I said, the -- the dispersive, to a different
16 type of viscoelastic.

17 So -- but I obviously was using
18 something I thought was better for my patients at the
19 time.

20 So he was -- I -- I probably -- based
21 on the second line of that paragraph, "I will have a
22 dispersive product by the end of the year and will
23 bring that around for you to try" -- "evaluate."

24 He's trying to -- he's trying to gain
25 our business with a product that would be equal to

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01 the product I was using that, obviously, they
02 probably weren't selling.

03 Q. I see. Okay.

04 So it says "I am hoping that our ideas
05 of Viscoat to Amvisc will work for you."

06 Are those two dispersive visc- --

07 A. They're different. Yeah, different
08 agents.

09 Q. They're different --

10 A. Amvisc is the one product that's -- that's
11 not two separate products.

12 Q. Okay. It's a combined?

13 A. It's a combined -- no, it's not a combined.
14 Amvisc is not a combined product.

15 Q. It's not a combined --

16 A. Not a combined product, right.

17 Viscoat is the -- is the protective
18 viscoelastic, the cohesive type.

19 Q. Yes.

20 A. And Amvisc is -- is just one. They're --
21 they're trying to say it would work for both.

22 And that's what my colleague --

23 Q. I see.

24 A. -- used forever. And I didn't -- I didn't
25 like it as much.

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01 Q. Okay. Okay. But it looks like -- it says,
02 "I appreciate your willingness to try it."

03 It looks like you are going to try it.

04 A. I probably told him if he brought something
05 as good for less money for the surgery center, for
06 whoever was buying it, I would be willing to try it.

07 Q. Okay.

08 A. You know, I'm always trying to be
09 cost-effective.

10 Q. Okay. Do you remember who -- who
11 manufactures Viscoat?

12 A. I don't know who manufactures Viscoat. I
13 think that's Alcon, but I -- I'm not positive.

14 Q. What about Amvisc?

15 A. That might be somebody else.

16 Q. AM -- is that probably AMO?

17 A. That could be AMO. Amvisc --

18 MR. DIXON: Objection. Foundation.

19 THE WITNESS: Amvisc probably is -- I
20 don't know. I really don't know.

21 BY MR. SAMIE:

22 Q. Okay. Is -- is Viscoat part of the
23 DuoVisc?

24 A. Yes.

25 Q. That's kind of --

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01 A. That's -- that's --

02 Q. -- one-half of the box?

03 A. Correct.

04 Q. Okay. So it seems like, in 2006, you're
05 still using -- predominantly using the DuoVisc.

06 A. Right.

07 Q. All right. So sometime after that is when
08 you changed over to the HEALON EndoCoat?

09 A. Yeah.

10 Q. Okay. Did you ever go to a wine tasting
11 event put on by Sightpath and Precision Lens?

12 A. No.

13 Q. No?

14 A. (Shakes head.)

15 Q. Okay. Did you -- did you go on a trip in
16 January 2007 to Beaver Creek with Paul Ehlen?

17 A. I -- I don't know. I am not sure. May- --
18 possible.

19 Like I said, Paul went on a couple
20 trips with us.

21 Q. Annually, you said you go --

22 A. With a whole group of guys.

23 Q. -- with a whole group of guys. And
24 that's -- is that always in January?

25 A. Yeah.

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01 Q. And that's kind of a thing you do.

02 A. For many, many years.

03 Q. Can you think of any year that you didn't do
04 it?

05 A. Yes.

06 This -- this year, we didn't do it
07 because the dates didn't work between Matt and Ian
08 and I. We're the three that have gone pretty much
09 every single year. Ian, because he owned the condo
10 that we stayed at, which he sold, at Beaver Creek.

11 Q. Okay.

12 A. Matt, because we ski together all the
13 time.

14 Q. Sure.

15 And when you -- when you say "this
16 year," you mean 2019?

17 A. 2019, I did not.

18 I went -- instead of with the guy trip,
19 I went with my kids and family, and I did it in
20 February.

21 Q. Oh, great.

22 A. But I went to Beaver Creek again, yes.

23 Q. Okay. So -- but going back --

24 A. That's the first year in many, many, many
25 years that we didn't do it.

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01 Q. Okay. So it's like- -- so it's likely, in
02 2007, you also went to --

03 A. Yeah. Yeah.

04 Q. Okay.

05 (Exhibit 20 marked for
06 identification.)

07 BY MR. SAMIE:

08 Q. Showing you Exhibit 20. So this is -- this
09 is a credit card statement that was produced to us
10 from Precision Lens. It's Bates-stamped PL0002949.
11 And it's a -- it's a statement -- a January statement
12 for activity from December 12, 2006, through
13 January 9, 2007. And the statement is for
14 Cameron-Ehlen Group, Incorporated, for Paul Ehlen.

15 Do you see that --

16 A. I do.

17 Q. -- at the top there?

18 A. Uh-huh.

19 Q. Okay. I assume you haven't seen this
20 document before.

21 A. I have not.

22 Q. I'm still going to ask you just a question
23 or so about this.

24 If you go to the second page.

25 A. Okay.

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01 Q. Do you see the dates -- transaction dates of
02 1-5? A lot of these are posting on 1-8 and 1-9.

03 But maybe a reference number would be a
04 better way to do this. Reference number 627- --
05 excuse me. 3328.

06 Do you see that?

07 A. Reference number 33- -- yes, I do.

08 Q. So that -- the transaction date on 1-6. So
09 January 6, 2007.

10 A. Okay.

11 Q. It says "BC lift ticket."

12 A. Yep.

13 Q. "RC" in parentheses. And then it says
14 "Beaver Creek, Colorado."

15 A. \$86 -- or \$85, not 86.

16 Q. \$85.

17 A. Yeah.

18 Q. And then, in the notation there, it's
19 written "ski trip."

20 A. Okay.

21 Q. Okay. Do you think, after looking at this,
22 that it's likely that, in January of 2007, Mr. Ehlen
23 was also on this ski trip at that time?

24 MR. DIXON: Objection. Form.

25 Foundation.

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01 THE WITNESS: Yeah. He probably was.

02 It looks like he bought his own lift ticket.

03 BY MR. SAMIE:

04 Q. Okay. And -- and do you have any
05 recollection of traveling on his private flight in
06 2007?

07 A. I -- I'm not sure if we traveled separate or
08 not, or if it was commercial. I don't -- I really
09 don't recall.

10 Q. Did -- are you -- do you know -- Paul Ehlen,
11 as far as you know -- have you seen him fly
12 commercially within the -- within the states? Or
13 does he typically fly his private plane?

14 A. I -- I know he's --

15 MR. DIXON: Objection. Foundation.

16 THE WITNESS: I'm not -- I don't
17 know.

18 BY MR. SAMIE:

19 Q. I'm just asking what you've observed.

20 Have you ever seen him take one of
21 these trips without his private plane?

22 A. I -- I know I've seen Paul at the meetings
23 around the country. And I've asked him if he
24 traveled commercially or on his own plane. And I
25 recall, on occasion, where he said, "I came

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01 commercial."

02 I don't recall -- I don't remember
03 exactly when.

04 Q. That's fine.

05 A. But that --

06 Q. For --

07 A. I've had --

08 Q. Sorry.

09 A. -- a conversation that he said he flew
10 commercial.

11 Q. Okay. And that was for a meeting, you
12 said?

13 A. Yeah. Some -- when I ran into him
14 someplace.

15 Q. Okay. So 2008 and 2009, did you -- you
16 never went on a trip to White Lake for hunting?

17 A. Never.

18 Q. So in 2010, you --

19 A. I can, perhaps, save you a lot of questions.

20 I never did anything with Paul;
21 hunting, fishing, anything. The only times that
22 we've ever gone on trips together is when he and Pete
23 joined our ski trip on a couple of -- a couple times.

24 Q. Okay.

25 A. Okay?

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01 Q. Well, then let's go -- let's go to this 2010
02 ski trip.

03 This was, again, in January of 2010.

04 A. Okay.

05 Q. It was -- is that right?

06 A. Yeah. That's -- we go in January.

07 Q. You go in January.

08 Did -- and Mr. Ehlen flew you on his
09 private plane for that trip?

10 A. We -- we flew on his plane together, that's
11 correct.

12 Q. Okay. And so walk me through the logistics
13 of that. Did you get picked up in Wausau? Get flown
14 to Colorado? Or -- and back? You know, what were
15 the logistics of the plane?

16 A. Yeah.

17 In 2010, he keeps his planes at the
18 Flying Cloud airport, I believe. And he flew from
19 there over to Wausau, picked up the owner of the
20 condominium where we were staying, Ian Swift --

21 Q. Uh-huh.

22 A. -- Matt Hattenhauer, myself, and Joe Mella,
23 a local attorney in town here; Keith Kocourek, a car
24 dealer who is also a skier. People who, you know,
25 ski together. A group of guys who go skiing

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01 together.

02 And he came over here, picked us up.

03 We flew from here to Eagle County Airport and --

04 arrived in Eagle County.

05 I can't remember, that year, if -- Ian

06 had an old Chevy Tahoe or something he kept at the

07 airport, or if he had one of his friends pick us up

08 and take us to where Ian owned the condo in Beaver

09 Creek.

10 And then, when we left, we left from

11 the condo, back to Eagle, and flew back to Wausau.

12 And he dropped us in Wausau.

13 Q. Okay. So -- so that year, you don't think

14 you took some sort of a shuttle? Or you're not

15 sure?

16 A. I -- I'm not sure.

17 Q. How -- how long is the drive from Eagle to

18 Beaver Creek?

19 A. Fifteen minutes.

20 Q. Fifteen minutes, okay.

21 A. (Nods head.)

22 Q. Okay. So you have flown to Beaver Creek

23 commercially as well as with a private aircraft.

24 A. Yes. Many times.

25 Q. What -- what are the -- I guess what are the

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01 logistics of flying there commercially? How do you
02 get from Wausau to Beaver Creek?

03 A. There was a -- a direct flight from
04 Minneapolis to Vail Eagle that Delta had.

05 Q. Uh-huh.

06 A. And so we'd fly from Wausau over to
07 Minneapolis, or drive. A couple times we drove to
08 Minneapolis and parked at the airport and then
09 drove -- and then flew to Eagle and then took the --
10 a shuttle from the Eagle County Airport to -- to
11 Beaver Creek.

12 Q. Okay. So that's a much lengthier time
13 for --

14 A. If you have to drive to Minneapolis, it's
15 definitely lengthier, yeah.

16 Q. And --

17 A. We have flown from Wausau to -- Wausau to
18 Minneapolis, Minneapolis to Eagle.

19 And then I've also done fly to Denver
20 and then Denver, a little short hop up to Eagle.

21 I remember one night, that flight got
22 canceled. We had to take a Colorado Mountain Express
23 one time from Denver up to Beaver Creek because the
24 weather was bad. They canceled the local flight.

25 Q. Okay. I want to go back to this in a

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01 second.

02 A. Sure.

03 Q. But I just wanted before -- just to close
04 out this trip.

05 Where do you -- where did you stay?

06 A. At Ian Swift's condominium in Snowcloud.

07 Q. Did you pay for that -- for staying at
08 Mr. Swift's --

09 A. No.

10 Q. -- condominium?

11 A. The only time I've ever paid Ian for the use
12 of his condo is when he was not with me, when I've
13 rented privately from him for my family and kids.

14 Q. Sure.

15 A. So Ian is an ear, nose, and throat doctor
16 who used to live in Wausau. He now -- he moved away,
17 and now he's in Gillette, Wyoming. But Ian was
18 Matt Hattenhauer's next-door neighbor and a good
19 friend of ours. And Ian had two places in Colorado.

20 And so I never paid to stay at Ian's
21 place when we were -- Ian was with us.

22 Q. What did you pay for on that trip?

23 A. Group expenses.

24 What -- if we'd go out to lunch,
25 dinner, we'd take turns paying for meals. And then

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01 we'd square up at the end.

02 Q. Tell me about that squaring up.

03 A. Sure.

04 Q. How -- how does that work?

05 A. You betcha.

06 On the 2010 trip, Joe Mella, who's an
07 attorney and also very type-A personality --

08 Q. Many of us are.

09 A. -- would -- would be the accountant.

10 So there was a -- a bowl, like a salad
11 bowl or a wooden bowl, on Ian's dining room table.
12 And every time we'd go to a meal, we'd keep -- we had
13 breakfast at the condo. And then we'd go skiing, and
14 then we'd stop and eat lunch at private cabins that
15 Ian had access to because he was a homeowner there.

16 There are three cabins on the Beaver
17 Creek mountain: Beano's, Allie's, and Zach's cabin.
18 And those three cabins, you could make a reservation
19 to have lunch there.

20 So we'd have a very nice -- we'd ski
21 hard in the morning. We'd get out, 9:00 o'clock; ski
22 hard until about 1:00. Have a leisurely lunch with,
23 you know, some wine. And then we'd ski in the
24 afternoon until about 4:00 o'clock. And then go back
25 to the condo, relax. And then we'd go out to a group

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01 dinner, usually fancy group dinners, at some nice
02 restaurants.

03 Q. So you'd take turns paying.

04 A. We'd take turns.

05 So okay. You paid yesterday. You
06 know, here's my credit card for lunch. Here's my
07 credit for dinner.

08 Then you'd go back to the condo, put
09 the receipt in the bowl on the table. And then, at
10 the end of the weekend, we'd figure out who paid what
11 and who owed what to each other.

12 And you'd either write a check or --
13 you know, Keith Kocourek always liked to carry a lot
14 of cash. He's a car dealer who was on the trip.
15 And --

16 Q. Sure.

17 A. -- you know, what do I owe? You know, he
18 always figured it out. And then we'd -- we'd square
19 up.

20 So we'd all pay the same amount of
21 money for the trip for the weekend.

22 Q. So would you pay -- would you -- -- would
23 you pay it to -- like, by check?

24 A. I like to put things on my credit card,
25 because I like to, you know, get the airline miles

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01 and stuff. So --

02 Q. Sure.

03 A. -- I'd use a credit card, oftentimes, if I
04 was paying for a group, you know.

05 Q. Right.

06 But in the settling-up process, when
07 you got the final accounting --

08 A. Like I said, sometimes check, sometimes
09 cash. Depends what -- you know, sometimes people
10 paid me. I didn't necessarily owe people. If I paid
11 for a lot of meals, they would pay me back.

12 Q. Was there a -- some sort of a documentation
13 of this settling up?

14 A. No. Just -- you know, just a piece of paper
15 that Joe Mella would --

16 Q. And so --

17 A. -- you know, figure out. You know, Ian owes
18 Matt this; or, you know, Keith owes Kevin so much,
19 the differential for the --

20 Q. Would -- would anyone send an invoice or
21 anything like that?

22 A. No.

23 Q. No?

24 A. No. Just guys. Just traveling together.

25 Q. Sure. Okay.

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01 So did Paul Ehlen pay for an expensive
02 sushi dinner one night for the group?

03 A. I saw that.

04 No. In fact, I paid for that sushi
05 dinner that night. And I've got the receipt on my
06 credit card there. It's Sato.

Ps: 403/602
75:1-23

07 Q. So I'm talking about 2010.

08 A. Oh, I'm -- I -- I'm not sure.

09 I mean, he might have.

10 Like I said, we all took turns paying.
11 But I know I paid for -- I saw a receipt on my credit
12 card for an expensive sushi dinner.

13 Q. Okay. And, I mean, we can -- we can get to
14 that. But --

15 A. Uh-huh.

16 Q. -- here's --

17 A. So it's very -- like I said, everyone --
18 everyone paid for different meals, and then we
19 squared up at the end.

20 So, yeah, he probably put something on
21 a -- on his credit card one time. It wouldn't
22 surprise me at all. Like I said, we all took
23 turns.

24 Q. Okay. And do you know if that was
25 Paul Ehlen's personal card or --

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01 A. I have no idea.

02 Q. -- Precision Lens' card?

03 A. Don't know.

04 Q. Do you talk business on these trips?

05 A. Mostly, it's just fun.

06 Q. Did you talk any business on those trips?

07 A. I mean, you -- if you got your partners
08 there, occasionally, you'd talk business. Because
09 your -- you know, your colleagues are there. You
10 talk about stuff. But --

11 Q. Well, no. If your -- these are your vendors
12 that are there as well.

13 A. I mean, they might say, "Oh, there might be
14 a new lens coming out." Or, you know, "You might
15 want to do this or that."

16 They may -- they may have, in
17 conversation, but I don't recall ever talking
18 business, really, with them.

19 Q. Okay. But given the amount of time you were
20 together, the fact that you work in the same arena,
21 it's likely that you did talk some business?

22 A. You're riding chair lifts, you're -- you
23 know, you're skiing. You just -- it was really just
24 fun, you know.

25 My retired partner lives out there. He

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01 would join us every year and ski a couple days.

02 Steve Herman.

03 Q. All right. So 2011 --

04 Well, actually, the flight. Did that

05 come into -- I guess who -- did you pay for the

06 flight?

07 MR. BIRRELL: Which flight?

08 BY MR. SAMIE:

09 Q. The 2010 flight out to Beaver Creek.

10 A. Typically, what would happen is we'd ask

11 Paul how much the fuel was. You know, "What do we

12 owe you for fuel? How much? You know, how much is

13 it?"

14 You know, Paul would be flying the

15 plane himself. And he -- you know, we'd say, "What

16 are -- you know, what do we owe? You know, put that

17 into the equation."

18 Q. Yeah.

19 A. We'd ask.

20 Q. So your recollection was that, in the

21 settling-up process, the cost of the fuel would be

22 kind of the metric for evaluating the value of this

23 flight?

24 A. Typically, yes.

25 Q. And then that would be split up amongst the

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01 people that were on the flight.

02 A. Right.

03 "What do we owe?"

04 Q. "What do we owe for the fuel?"

05 A. Right.

06 Q. Okay.

07 A. Because that I -- we -- we -- everything
08 else was black and white. We knew -- you know, you
09 could see the receipts for everything else. But we
10 really didn't know, you know, what, you know, the --
11 the fuel expense or airplane expense would be.

12 Q. Sure.

13 The -- the settling up, you have -- for
14 this 2010 trip, do you have any documentation of
15 checks paid or the accounting for that settling up?

16 A. I -- I tried to find some old checks. I
17 didn't really find the old checks. I saw my credit
18 card statements.

19 Q. Sure.

20 A. And that's all I could find.

21 Q. And those are the credit card statements for
22 the stuff that you get --

23 A. That I paid for.

24 Q. -- you get credited for --

25 A. Right. Right.

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01 Q. -- in the settling up?

02 A. Right. Right.

03 MR. DIXON: Objection. You guys are
04 talking over each other.

05 MR. SAMIE: Okay.

06 BY MR. SAMIE:

07 Q. The -- that -- that -- those credit card
08 statements, those -- those charges in there that you
09 highlighted, those are the items that you
10 contributed --

11 A. Could -- could easily identify.

12 The -- and the -- you know, with the
13 first look at them.

14 MR. SAMIE: Are we on 21?

15 (Exhibit 21 marked for
16 identification.)

17 BY MR. SAMIE:

18 Q. So I'm showing you 21. So these are -- this
19 is a four-page exhibit, and the Bates number is
20 Flaherty 32 through 35.

21 Do you see that?

22 A. Yeah.

23 Q. Are these, kind of, pages of different bank
24 statements that you --

25 A. Yeah. Credit card statements.

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01 Q. That -- these came from your personal --

02 A. My --

03 Q. -- credit card statements?

04 A. Yes. Exactly.

05 Q. And these accurately reflect what it is

06 that -- the actual copies that you received from the

07 bank?

08 A. They do.

09 Q. So on this very first page, this is Flaherty

10 32, you've circled two items here?

11 A. Right.

12 Q. And -- and is this your handwriting?

13 A. "Group meal," I wrote -- I wrote that.

14 Q. And you circled the amounts?

15 A. I did.

16 Q. So these -- are these circled amounts items

17 that -- that you would have been credited in the

18 settling-up process?

19 A. Yeah.

20 Q. Okay. It looks like this is the only page

21 for 2010.

22 A. Incorrect. The next page as well.

23 Q. So the next page looks like it's December 20

24 to January 27 --

25 A. But the -- look at the -- the -- the

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01 transaction date for the Sato meal, the sushi meal.

02 January 7. Sato meal, 553. I paid for that.

03 Q. Right.

04 I'm saying the second page, it looks
05 like it might be from -- a statement from 2011.

06 A. Yeah. It was. December 28 to January '11.
07 It's the statement at the top, right.

08 Q. All right. So on the first one, though,
09 that's for January 2010; right?

10 A. Well, no.

11 The first one, it says the posting date
12 is January 11.

13 Q. Of 2010.

14 A. Um --

15 Q. It's one of those deals where I think
16 we're -- unfortunately have days in the years that
17 are --

18 A. All right.

19 MR. DIXON: Top of the page.

20 BY MR. SAMIE:

21 Q. It's at the top of the page, circled.

22 A. Oh, yeah. January 2010 statement. Okay.

23 Q. 2010 statement.

24 A. All right.

25 Q. So we're looking at -- so just on the first

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01 page, we're looking at --

02 A. Yes.

03 Q. -- posting dates of --

04 A. Okay.

05 Q. -- or you know, transaction dates and

06 posting dates.

07 A. Yeah.

08 Q. Okay. So --

09 A. January 8 and January 9.

10 Q. So for this document here, is this the
11 extent of what you believe you put on your card or
12 what you were credited for in the accounting
13 process --

14 A. That's --

15 Q. -- for the 2010 trip?

16 A. That -- that's all I could find when I was
17 asked to look for it.

18 Q. Okay.

19 A. You know, there might be more. Because,
20 like I said, I may have had a different credit card
21 as well. But it -- you know, I don't -- fortunately,
22 my wife's fairly organized. She was able to find
23 these statements, but --

24 Q. Sure.

25 A. -- there -- you know, I'm -- there might

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01 have been a different statement.

02 I often use an American Express card
03 too, and this is a -- this is a Visa statement.

04 So...

05 Q. Do you recall if this was a year that you --
06 you owed at the end of it, or you were getting money
07 back?

08 A. I have no clue. I don't recall.

09 Q. Okay. And -- but you don't have any records
10 of any additional payments that you made related to
11 this trip?

12 A. I don't.

13 Q. All right. Let's move on to 2011.

14 So 2011, January, you took another ski
15 trip to Beaver Creek; is that right?

16 A. Right.

17 Q. Okay. And who -- who was on that trip?

18 A. Basically, the same group, except Joe Mella
19 did not go that year and Doug Edwards came.

20 Q. And who is Doug Edwards?

21 A. One of my colleagues.

22 Q. He's another surgeon?

23 A. You met him yesterday.

24 Q. Right.

25 Okay. And how did you -- how did you

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01 get to Beaver Creek in 2011?

02 A. Well, that was a -- a little different,
03 because I was doing surgery the morning that we left
04 and Doug also was, I believe.

05 And so rather than driving over to
06 Minneapolis -- and Paul indicated that he wanted to
07 leave from Flying Cloud, which was fine. He was
08 still offering to, you know, fly with us out there.
09 So Keith Kocourek flew us from Wausau over to Flying
10 Cloud that morning.

11 Q. Okay.

12 A. So we worked. Doug and I worked that
13 morning here in Wausau. And then Keith, who is also
14 a pilot and a friend of Paul's, that's part of their
15 connection, flew his plane with us to Minneapolis, to
16 Flying Cloud, and we left from Flying Cloud.

17 Q. Okay.

18 A. On that morning.

19 Q. And that was on January 9 --

20 A. Whatever that Thursday was.

21 Q. It was a Thursday?

22 A. Yeah.

23 Q. Okay. I think it was January 6, actually,
24 2011.

25 Does that sound about right?

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01 A. I -- it would --

02 Q. It was a Thursday, though?

03 A. I can look at my calendar, if you want me
04 to.

05 Q. But you're sure it was a Thursday?

06 A. Yeah.

07 Q. Okay.

08 (Exhibit 22 marked for
09 identification.)

10 BY MR. SAMIE:

11 Q. Giving you 22.

12 Okay. So this is an email that was
13 from December 14, 2010; so the end of 2010. And the
14 subject matter is a "Beaver Creek plan."

15 It looks like you are a recipient of
16 some of these emails.

17 A. Yep. I was on them.

18 Q. Okay. So you would have received these
19 emails?

20 A. Right.

21 Q. Okay. And so it looks like these are -- are
22 these emails relating to the planning for the Beaver
23 Creek trip --

24 A. Uh-huh.

25 Q. -- happening in January?

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01 A. Yep.

02 Q. Okay. And it looks like, on -- so on the
03 second from the top, there's an email from
04 Pete Gosz -- well, actually, let's just go from the
05 bottom.

06 It says "Here is the plan: Keith will
07 be flying Wausau group to Minneapolis."

08 Do you see that?

09 A. I do.

10 Q. All right. Is that what you're referring
11 to?

12 A. Yes.

13 Q. Okay. Did -- did Matt Hattenhauer also go
14 on that or --

15 A. He went on the trip, but he -- he drove over
16 to Minneapolis. I think his wife was going to
17 Minneapolis for something. So she drove him to
18 Minneapolis. His daughter, I think, was in
19 Minneapolis at the time. So --

20 Q. Okay.

21 A. -- he drove. His wife gave him a ride, I
22 believe, to Flying Cloud. He did not fly with Keith
23 and Doug and I over there. So he was there when we
24 arrived.

25 Q. He was there when you --

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01 A. At Flying Club, uh-huh.

02 Q. Got it. Okay.

03 "We will all" -- so the next -- "We
04 will all fly to Eagle together, and Paul will drop
05 Wausau group in Wausau on Sunday night."

06 Is that how it ultimately worked?

07 A. Yes.

08 Q. Okay. So he -- you caught a ride from
09 Minnes- -- Minneapolis, Minnesota, to Eagle --

10 A. Uh-huh.

11 Q. -- and on the way back, you got --

12 A. Came to Wausau.

13 Q. -- the flight all the way to Wausau.

14 A. Right.

15 Q. Okay.

16 "What time do you want to leave from
17 Wausau on Thursday? Paul does like to land before
18 dark at Eagle airport."

19 Do you see that?

20 A. Yep.

21 Q. Okay. And then we -- kind of skipping
22 over Mr. -- Dr. Hattenhauer's email, but Pete Gosz
23 asked, "Do we want to ski Thursday?"

24 And -- do you see that?

25 A. Yeah. At the top.

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01 Q. And that Dr. Edwards says, "Absodamlutely.

02 Off all day as well."

03 Do you see that?

04 A. Uh-huh. Yep.

05 Q. Do you remember if you -- if you did ski on

06 that Thursday?

07 A. I -- I don't recall.

08 Q. Okay. Do you remember -- do you remember

09 generally being able to ski on the days that you

10 would travel out there?

11 A. Occasionally. And commercially too.

12 Their deal -- Delta had a deal where,

13 if you flew Delta to Eagle, and when you presented

14 your boarding pass to the lift ticket at Beaver

15 Creek, they would give you a half-a-day pass free.

16 You wouldn't have to pay for it.

17 Q. But it would have -- it would have to be on

18 the day that you actually --

19 A. Yeah.

20 Q. -- flew there?

21 A. The day you flew, yeah.

22 So if you -- if you arrived in -- in

23 Beaver Creek, you go out -- say you get there at 1:00

24 or 2:00 in the afternoon. The lifts are open until

25 4:00. You could take the boarding pass from Delta

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01 and present it to the lift ticket, and they would
02 give you a pass for -- without charging you.

03 Q. Okay. So that was a flight from Minneapolis
04 to --

05 A. That -- yeah. On a commercial flight.

06 Q. Commercial flight --

07 A. Yeah.

08 Q. -- from Minneapolis to --

09 A. So I remember doing it a couple times.

10 Q. -- to Eagle?

11 A. Now, the -- and I do remember, also, on the
12 days we would travel, coming back, we would ski on,
13 you know, Sunday, and then fly back, which was
14 nice.

15 Q. Fly back commercially --

16 A. No.

17 Q. -- or fly back --

18 A. When we went with Paul.

19 Q. When you went with Paul.

20 A. Yeah.

21 Q. Okay. So that was the only time you could
22 get in a ski on --

23 A. Yeah. Yeah.

24 MR. DIXON: Objection. Form.

25 Foundation.

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01 BY MR. SAMIE:

02 Q. So that would have been the only day that
03 you can ski on the day you were flying back, back
04 home?

05 MR. DIXON: Objection. Foundation.

06 THE WITNESS: It -- it would depend on
07 when your return flights were commercially.

08 We -- we did it a few times when we
09 were flying from -- from Vail to -- from Eagle to
10 Minneapolis. You could do it.

11 But if you -- if you had to connect
12 through Denver, you couldn't do it. There wasn't
13 enough time in the day.

14 BY MR. SAMIE:

15 Q. Okay. The flight from Minneapolis that you
16 were referring to, that you get this discount for --

17 A. Uh-huh.

18 Q. -- that was direct to Eagle?

19 A. Yep.

20 Q. They -- do you remember what time that would
21 leave Minneapolis?

22 A. Like 10:20 in the morning or something like
23 that.

24 Q. 10:20 in the morning.

25 A. Yeah. Something -- thereabouts.

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01 Q. Okay. So on this particular trip, there's
02 no way that you would have ever been able to take
03 that flight if you were going to be doing surgeries
04 in Wausau Thursday morning; right?

05 MR. DIXON: Objection. Foundation.

06 THE WITNESS: I'd have to start really
07 early and leave really early.

08 BY MR. SAMIE:

09 Q. It -- but it's, like, a three-hour drive.

10 A. It would -- you wouldn't get a lot of
11 surgery in.

12 Q. Okay. So you were able to get the amount of
13 surgery in that you wanted to for this particular --
14 the way that this was particular -- was -- was
15 organized; right?

16 A. I don't remember how much I wanted to do
17 that day.

18 Q. Okay.

19 A. But --

20 Q. Okay.

21 A. But it just -- I was scheduled to work. So
22 that's why we did it that way. That way, Keith flew
23 us.

24 Q. So what did you pay for -- or I should --
25 where did you stay on this trip?

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01 A. Every time I've been out there with the
02 group of guys, I've stayed at Ian Swift's condo.
03 Every single time.

04 Q. Did he charge anything for the use of the
05 condo?

06 A. No.

07 But he was in the pool, like the rest
08 of us, where, you know, the money he spent on
09 stocking it with groceries and -- and beer and wine
10 and, you know, cheese and -- just -- the things
11 that -- that we had around there.

12 Q. Sure.

13 A. Breakfast food. You know, bacon and eggs.
14 He would have that laid in, and we would all pay for
15 that too, obviously.

16 Q. Okay. So these grocery expenses.

17 A. Yeah. Just, like, split, like everything
18 else.

19 Q. But for the -- the lodging itself --

20 A. No. Only -- only when I did not stay with
21 him.

22 When I've rented it from him, he's
23 given me a heck of a deal. When I've stayed with my
24 family, I pay, you know, a minimal amount for the
25 condo and then pay for his cleaning fees and stuff --

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01 Q. Got it.

02 A. -- afterwards.

03 Q. The -- so in the -- in the accounting of it,
04 the cost of his unit was not --

05 A. No.

06 Q. -- credited to him through that accounting.

07 A. No, it was not.

08 Q. Okay.

09 A. It was never in the -- never in the

10 accounting. Never in the equation.

Ps: 602
93:9-25

11 Q. Do you recall how the accounting worked for
12 this trip?

13 A. I was trying to recall if -- if

14 Matt Hattenhauer was sort of the -- the Joe Mella
15 this time as far as the -- writing the numbers down.

16 I know it was not me reconciling the
17 receipts that were in the bowl on the dining room
18 table on the 2011 trip.

19 Q. Okay. Do you remember if it was
20 Paul Ehlen?

21 A. I don't think it was Paul.

22 Q. Would --

23 A. I think it was Matt. I really believe it
24 was Matt. But I'm not -- I'm not a hundred percent
25 certain.

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01 Q. How did the -- how did -- how did things
02 work with the flight? Was it the same as with 2010,
03 where you figured out the cost of the fuel?

04 A. It -- same thing.

05 Q. Same --

06 A. It was the same -- same -- you -- you ask,
07 you know, "What does -- what does it cost for fuel?"

08 So -- because that's the one thing
09 we -- I didn't know. You -- we knew everything else.

10 "What do we owe for fuel for the trip,
11 you know, this year?"

12 Q. So did you pay for the flight separately
13 from the tallying-up costs?

14 A. Yes. It was -- it was afterwards.

15 Because I -- I saw an email. I had to
16 ask what the fuel cost was. It was, like, 800 bucks
17 or something. I saw a subsequent email about that
18 after -- after the trip was back.

19 Because I -- you know, I -- we hadn't
20 squared for fuel in 2011. And I think Doug did right
21 away. When Heidi picked him up at the airport, I
22 think he might have.

23 But I -- I didn't. And I knew I -- I
24 owed for -- for fuel. So I wanted to know how much
25 it was. I think it was about 800 bucks, as I

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01 recall.

02 Q. It was 800 bucks for the fuel?

03 A. (Nods head.)

04 Q. That's what you recall it being?

05 A. Uh-huh.

06 Q. Okay.

07 A. Which I thought was reasonable.

08 Q. And you squared up on that separately from

09 the accounting --

10 A. Uh-huh.

11 Q. -- process?

12 A. Correct.

13 Q. And how did you pay for that?

14 A. I think with a check.

15 Q. With a check?

16 A. (Nods head.)

17 Q. Do you still have a copy of that check?

18 A. I -- I looked briefly. I did not find it.

19 But, you know, if it's critical, I could probably

20 find it for you.

21 Q. Okay.

22 (Exhibit 23 marked for

23 identification.)

24 BY MR. SAMIE:

25 Q. I'm handing you 23.

 Flaherty
designations

 Ps' Counters to Ds'
Flaherty Designations

 D's Flaherty
designations

Transcript of Flaherty, Kevin

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01 MR. SAMIE: Sorry, guys. I think I
02 might only have -- you might need to share. Sorry.

03 BY MR. SAMIE:

04 Q. So these are items that were produced to us
05 from you --

06 A. Uh-huh.

07 Q. -- right?

08 It -- and can you walk me through what
09 this is?

10 A. Sure. These are old -- old text messages
11 from 2010, the first one between Paul Ehlen and I.

12 Q. Okay. And then at some point --

13 A. And then it goes -- it goes 2011. And
14 then 2000 -- it skips to 2014.

15 Yeah. These are text messages.

16 Q. Text messages.

17 And then --

18 A. And Pete Gosz too.

19 Q. Pete Gosz.

20 A. Yep.

21 Q. A bunch of text messages with Paul Ehlen
22 and --

23 A. Paul and Pete, yep. Paul and Pete.

24 Q. And you pulled -- did you pull these off of
25 your phone?

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01 A. Yeah.

02 They -- they refreshed -- the guy from
03 my phone -- my IT guy actually got them off my
04 phone.

05 Q. Okay. So he kind of took screenshots and --
06 and --

07 A. I -- I don't know exactly what he did.

08 He just -- you know, I gave him my
09 phone. And he said he needed to go through it and
10 find old text messages, and I said fine.

11 Q. Okay. So on the -- on the -- Pete --

12 A. Are these numbered? Or what page do you
13 want me?

14 Q. Yeah, my version is not numbered.

15 A. They're by dates. We can do it by day.

16 MR. DIXON: There's a Bates label.

17 THE WITNESS: All day. All days.

18 MR. SAMIE: I know. But mine, for some
19 reason, don't have it.

20 BY MR. SAMIE:

21 Q. Okay. So if you go to July 20 -- sorry.

22 A. What year?

23 Q. Strike that.

24 Okay. Sorry. So for the Pete Gosz
25 messages, February 2, 2011.

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01 A. Okay.

02 Q. All right. So it says "Pete" -- do you see
03 this? This is a message --

04 A. Yep.

05 Q. So the darker messages are the ones from
06 you.

07 A. Right.

08 Q. It says, "Pete, how much do I owe you guys
09 for the Colorado ski trip?"

10 A. Right.

11 Q. "It was so fun. Definitely the highlight of
12 the winter so far."

13 A. Yeah.

14 Q. And he responds, "Bill on way. I think
15 one" -- "I think 811 total."

16 A. That's for the fuel, yes.

17 Q. Is that -- is that what you recall seeing?

18 A. For fuel. Yep. Yep.

19 Q. "Great. I'll drop you a check. Who should
20 I make it out to? And what address to send it to?"

21 A. Right.

22 Q. And he says, "We had to send a bill. It
23 went to ECOW. Should be there soon."

24 A. That would be weird. Yeah, I don't know why
25 it would go to ECOW.

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01 Q. You don't know why they would do that?

02 A. No.

03 That would be -- that would be goofy,
04 because it's not ECOW; it's my personal expense.

05 Q. Okay. So do you think it's possible that
06 ECOW paid this bill?

07 A. No. No way.

08 Q. Okay. But you didn't object to that at that
09 time? You said, "Sounds good"?

10 A. I thought that was fair, you know, for, you
11 know, seven people, 800 bucks, about 5600 bucks.
12 That's probably about right for fuel, I thought, to
13 go back and forth.

14 And whatever -- he tells me it's about
15 a thousand bucks an hour to run -- run his plane.
16 You know, that's what he --

17 Q. To rent his plane?

18 A. To run it.

19 Q. Oh, to run it.

20 A. Yeah, with all the...

21 Q. Okay. So -- but you didn't object to them
22 sending a bill to ECOW?

23 A. Well, I just wanted to make sure I squared
24 up with him, you know, for what I owed him for -- for
25 fuel.

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01 Q. Okay.

02 (Exhibit 24 marked for
03 identification.)

04 BY MR. SAMIE:

05 Q. Showing you 24. Is this the -- the bill or
06 the invoice that you received?

07 A. I've never seen this before.

08 Q. You've never seen this document before?

09 A. Never have, huh-uh.

10 Q. Did you receive a bill?

11 A. I don't remember see- -- receiving a bill,
12 no.

13 Q. Did ECO -- do you remember if ECOW received
14 a bill?

15 A. I don't know.

16 I just -- I mean, if -- if he -- he
17 told me I owed him 811 bucks, I paid 811 bucks, if
18 that's what it is.

19 But I don't remember seeing a bill. I
20 think you saw the evidence in my text messages
21 there.

22 Q. That -- well, that strikes me as if that
23 was -- that a bill was on the way; right?

24 A. But -- but this is -- this doesn't make
25 sense. This -- this is no -- it -- the condo, we

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01 didn't pay for. It was Ian's condo. We stayed in
02 his condo. You know, there should be no condo
03 expense.

04 Groceries, we settled up at the time.
05 Wine, that's a ridiculously low wine bill for this
06 group, honestly.

07 It's just not -- this is not based in
08 reality here.

09 The \$800 would be for fuel only. This
10 is -- everything else, we settled, you know, at the
11 end of the weekend.

12 Q. Okay. So --

13 A. So I -- I don't know. I've never seen this
14 document before.

15 Q. Was there a second condo that was rented for
16 this trip?

17 A. Not to my knowledge.

18 Q. Not to your knowledge?

19 A. No.

20 Q. You don't recall Paul Ehlen renting a second
21 condo for this trip?

22 A. I don't. I -- I know that one time we were
23 out there, Paul decided to stay at the hotel. He
24 thought it was too crowded in Ian's condo for seven
25 or eight guys.

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01 Ian has a three-bedroom condo with, you
02 know, a sleeper sofa in the living room and stuff.
03 And I remember Paul one time saying, "I'm going to go
04 sleep in the hotel." And he -- he went and slept in
05 the hotel one night on one trip for sure. But I
06 don't know if he had a second condo here.

07 I remember him, at one of the trips,
08 deciding not to stay in Ian's condo, but getting a
09 hotel room and going over to the hotel, which is
10 right next door to Ian's condo.

11 Q. Okay. Did you stay -- did you stay anywhere
12 but Ian Swift's condo?

13 A. Only Ian's condo every time.

14 Q. Okay. So back to this number here.

15 The number 811 obviously matches the
16 number that was quoted to you in the text; right?

17 A. Yep.

18 Q. But you would -- you would dispute how this
19 is calculated here?

20 A. Absolutely.

21 Q. Okay. And this -- this doesn't make any
22 sense to you?

23 A. Not at all.

24 Q. Okay. So who organized this trip?

25 A. Matt Hattenhauer has been sort of the

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01 ringleader every year to get the group of guys going.

02 And when it turned out that -- that

03 Paul's a skier, and Pete, you know, are skiers, I

04 think he invited them to join us. And then it --

05 obviously, it turned out Paul's got a plane, says,

06 you know, "I'll fly the group." Fantastic.

07 I mean, some years we've had dentists,

08 anesthesiologists. I mean, primarily physicians from

09 Wausau that went on these guys' trips.

10 Q. And you felt, though, that this was -- that

11 this was something that Matt and Ian kind of were

12 responsible for putting it together?

13 A. Yeah.

14 They were next-door neighbors, Ian

15 owned the condo, and we all loved to ski. And so

16 we'd -- we went skiing a lot together.

17 Q. Okay.

18 A. And like I said, I -- the way I view it is,

19 really, Pete and Paul joined our guys' trip for a

20 couple of years.

21 Q. So you didn't view this as a trip that Paul

22 would put together?

23 A. No, he did not.

24 Q. Paul Ehlen.

25 A. He did not.

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01 Q. I'm showing you Exhibit 8.

02 A. Okay.

03 MR. SAMIE: You guys have this from
04 yesterday?

05 MR. GASKINS: Uh-huh.

06 MR. DIXON: Oh, yeah. Thanks. I've
07 got to wake up.

08 BY MR. SAMIE:

09 Q. So this is an email from January 2011.

10 Do you see this?

11 A. Uh-huh.

12 Q. That is -- that you are a recipient of this
13 email?

14 A. Okay.

15 Q. Okay. And it says, "Gents, I was trying to
16 come up with something" -- this is in
17 Dr. Hattenhauer.

18 A. Uh-huh.

19 Q. "I was trying to come up with something to
20 send to Paul in appreciation of the weekend of
21 skiing. It is difficult for a guy who has
22 everything, but what do you think about a big floral
23 arrangement sent to his office at Precision Lens?"

24 A. Yeah. I mean, just -- you know, it sounds
25 like Matt Hattenhauer is just trying to do something

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01 nice because we had a good time.

02 And, you know, Paul, you know, didn't
03 charge us for being the pilot of this trip. You
04 know, so wanted to thank him.

05 Q. Okay. So he was doing you a solid in some
06 ways in getting you there to -- at a fair cost?

07 A. He just -- it's nicer --

08 MR. BIRRELL: Do you know what "solid"
09 means? I don't know what that means.

10 BY MR. SAMIE:

11 Q. He was -- he was doing you a favor.

12 MR. DIXON: Objection. Form.

13 THE WITNESS: It was -- it was fun to
14 ski with him. It was fun to ski with him.

15 BY MR. SAMIE:

16 Q. You felt that you needed to show
17 appreciation to him for the weekend of skiing.

18 A. It -- just a thank you, because he went
19 above and beyond. I mean, when a guy brings his own
20 plane and -- and gives you a ride in his plane,
21 that's -- that's pretty nice, you know.

22 Q. It's much better than flying commercial.

23 A. It -- you can get extra skiing in.

24 Q. Okay. Did you send any flowers to Ian Swift
25 for this trip?

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01 A. Not to my knowledge.

02 Q. Okay.

03 A. But I would see Ian regularly. You know,
04 Paul's in Minneapolis. Ian was right in town.

05 Q. Can you pull up 21 again?

06 A. (Witness complies.)

07 Q. So on the second page of Exhibit 21, this is
08 Flaherty 33. This one is the -- the statement for
09 December 28 -- a page from the statement December 28
10 to January 27, 2011, for January; right?

11 A. Yes.

12 Q. Okay. So this -- you circled an item on
13 here. And you wrote "group meal."

14 That's your handwriting?

15 A. Yes.

16 Q. Okay. Is this the extent of what you have
17 for what you contributed into the pot presettling
18 up?

19 A. All -- that's all that's on this
20 statement.

21 Q. That -- but do you have any records of
22 anything else for your -- your contributions into
23 the --

24 A. I couldn't find any when I was asked to
25 look.

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01 But I -- I would presume that I
02 probably paid for more than one meal on this trip,
03 because everyone usually paid for a couple of meals,
04 a lunch and a dinner.

05 Q. Okay. On the next page, it's Flaherty 34.

06 A. Uh-huh.

07 Q. It looks like this is -- well, can you
08 explain to me what this -- I don't -- I actually
09 don't know that this is from the same statement, but
10 you pulled it from another statement, perhaps?

11 A. I think, I -- right. I'm -- this is, like,
12 a summary statement, I think, for the end of the year
13 or something.

14 Q. Okay.

15 A. Where they organize stuff by categories.

16 Q. To kind of tell you what you --

17 A. Yeah.

18 Q. -- spent the money on --

19 A. What you did --

20 Q. -- what you did?

21 A. -- yeah.

22 Q. Okay. So "My" -- and this is your
23 handwriting, "my own airfare for trips"?

24 A. Yeah. Exactly.

25 Q. Were -- are any of these trips trips with

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01 Precision Lens people?

02 A. I think that -- yeah, I think there might
03 have been -- well, I'm not sure.

04 The -- the bills -- you know, Delta
05 Air, Los Angeles, California, I think that just might
06 be their billing site, because I did not fly to
07 Los Angeles six or seven, eight times, whatever that
08 is, in 2011.

09 So this might have been a -- might have
10 been an airfare for a trip.

11 I -- I don't know. I really don't
12 know.

13 Q. Okay. The next page, the last page of
14 this --

15 A. Yeah.

16 Q. -- you've highlighted some season ticket
17 prepayment.

18 A. Uh-huh.

19 Oh, the reason I highlighted this --

20 Q. Yeah.

21 A. -- is just to show that the -- in that --
22 the allegations that people paid for my ski tickets,
23 that's total malarkey. No one ever bought me a ski
24 ticket. I always paid for my ski tickets.

25 Q. Sure.

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01 A. And this just shows you I get a season
02 ticket every year. This is the prepayment for the
03 preseason tickets.

04 Q. For 2011.

05 A. Yeah. Basically, every year.

06 Q. Okay. It's -- would you be -- would these
07 be prepayments for 2012?

08 A. Could be pre- -- they're probably payments
09 for next year. That's right. Yeah, they do it
10 in --

11 Q. Okay.

12 A. But I -- I could find it. I mean, I get a
13 season ticket every year out there. I don't -- you
14 know...

15 Q. Did you take any other private flights with
16 Mr. Ehlen other than these ones that we talked
17 about for --

18 A. No.

19 Q. -- these trips?

20 In February of 2013, did you fly on a
21 flight with Mr. Ehlen?

22 A. No, I don't believe so.

23 To where?

24 Q. I don't know.

25 What about May of 2013?

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01 A. No.

02 Q. After the 2011 ski trip, did you take any
03 other ski trips with Paul Ehlen?

04 A. No.

05 Q. After 2011, you said you did take some ski
06 trips with Pete Gosz.

07 A. Pete -- yeah. Pete came.

08 What happened, I -- I don't know the
09 exact date, but Paul separated his -- his -- he had
10 an ACL tear in his knee, or MCL tear. And so he was
11 out of commission skiing at least one, maybe two
12 seasons. So he did not ski.

13 But Pete came on our guys' ski trip,
14 still, a year or two after. And we all flew
15 commercially, obviously.

16 Q. Can we talk a little bit about --

17 MR. SAMIE: Well, do you -- does anyone
18 need a break?

19 MR. BIRRELL: Nope.

20 MR. DIXON: Do you need a break?

21 COURT REPORTER: I'm fine. Thank you.

22 MR. SAMIE: Okay.

23 BY MR. SAMIE:

24 Q. Did Pete Gosz or did Precision Lens try to
25 get you to use more multifocal lenses in your

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01 surgeries?

02 A. No. They never pressured me to do anything
03 like that, no.

04 Q. Did they -- they're salespeople, though.
05 And they -- did they want you to try to use more?

06 A. They -- they really didn't ever push me to
07 use any product. I used what was right for my
08 patients.

09 So I -- I -- I did not feel I was ever
10 pressured to use any device or lens or anything that
11 they were selling.

12 So I would say no. I -- I never felt
13 any pressure to use any specialty lenses or
14 multifocal lenses, no.

15 MR. SAMIE: Actually, why don't we just
16 go ahead and take a break.

17 MR. DIXON: Okay.

18 VIDEOGRAPHER: Going off the record at
19 9:36.

20 (Discussion held off the record.)

21 VIDEOGRAPHER: We're back on the record
22 at 9:46.

23 BY MR. SAMIE:

24 Q. Dr. Flaherty, I was just asking you, before
25 we went off, if Precision Lens was trying to get you

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01 to use the multifocal lens more.

02 Did they -- did they ever take you out
03 for dinner or a meal to discuss your usage of
04 multifocal lenses?

05 A. No.

06 Q. No?

07 (Exhibits 25 and 26 marked for
08 identification.)

09 BY MR. SAMIE:

10 Q. I'm handing you 25 and 26.

11 MR. DIXON: 25 is on top?

12 MR. SAMIE: Sorry. If you could --
13 that one is for them as well.

14 MR. DIXON: This is 25?

15 MR. SAMIE: That's 25. That's 26.

16 MR. DIXON: Okay. That's 25. That's
17 26.

18 BY MR. SAMIE:

19 Q. So here is an email between you and
20 Mr. Gosz, 25 is, ECLSI_012295.

21 A. Okay.

22 Q. And on the bottom here, it says -- from
23 Mr. Gosz to you and Dr. Hattenhauer. "Matt and
24 Kevin, can you meet for a beer Monday the 21st after
25 work. Amy" -- we'll say "Amy N." here -- "and me

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01 would like to visit with you both and discuss any
02 interest you may have in the TECNIS Multifocal."

03 And you said, "I can meet with you but
04 not for a beer because I'm on call."

05 And it looked like you planned for a
06 meeting at the City Grill.

07 Does that sound --

08 A. Looks like it, yeah.

09 Q. Okay.

10 A. I mean, I always -- I -- you know, I like
11 Pete, and I -- you know, when he's in town, I like to
12 see him. He's been to my house for a beer before,
13 when I'm not on call --

14 Q. Sure.

15 A. -- you know --

16 Q. So --

17 A. -- I consider him a friend.

18 Q. -- if you go to -- if you go to 26, this is
19 an expense report that was produced by
20 Precision Lens, PL0002337.

21 And the top entry there -- this is
22 Pete Gosz expense report for the month ending June
23 of two thousand -- well, it looks like that's a typo
24 there, because it says "submitted 8-18-2010." And
25 the date on the top entry is for June 21, 2010.

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01 A. Uh-huh.

02 Q. Do you see that?

03 A. I do see it, yep.

04 Q. It says "City Grill, Wausau. Drs. Flaherty,
05 Hattenhauer, Sprik." And it says "TMF."

06 A. Uh-huh.

07 Q. Okay. What do you -- what do you think
08 "TMF" means?

09 A. Probably TECNIS Multifocal.

10 Q. Okay. And there's an entry here for meals
11 and entertainment for \$127.

12 A. I see that.

13 Q. And back to 25, it looks like, in that first
14 email, he was asking you to meet on the 21st of June?

15 A. That's what it says, yeah.

16 Q. Okay. So do you think it's likely that
17 you -- you did go out for meals to talk about --

18 A. I could well have.

19 But I'm not sure we -- yeah, I might
20 have said, you know, at this point, I'm not
21 interested in that lens, or I might have said I'm
22 already using it. I don't know at that point.

23 Q. Okay. But he did take you out to talk about
24 it.

25 A. Looks like it. I don't know the exact --

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01 again, this was nine years ago.

02 Q. Sure.

03 I want to go back to the ASC for a
04 second.

05 When -- when we were talking about --
06 well, why is it that you all wanted to build the ASC?

07 A. Because --

08 Q. Why not stay at -- why not stay at the
09 Wausau Surgery Center?

10 A. Control. Scheduling, ease of scheduling.
11 So much easier to do a case in your own surgery
12 center than to have to drive across town to do it.

13 Q. Okay.

14 A. Plus, it's profitable.

15 For a lot of reasons: ease of
16 scheduling, control, you're not competing with other
17 people for start times. You know, plastic surgery,
18 ENT, urology. We could start, you know, at 7:30 in
19 the morning, at 12:30 in the afternoon. You weren't
20 being bumped by other surgeons.

21 Q. Okay.

22 A. So -- and there's a lot of advantages to
23 being just single specialty. We're a -- really a
24 finely focused factory to -- to put a pun on it. You
25 know, we do just eyes. We don't do all the rest it.

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01 So it's just more control. It's

02 just -- it's a better facility.

03 Q. So do you -- by -- through that efficiency,

04 are you able to do more cases?

05 A. Absolutely.

06 Q. Okay. So the volume goes up.

07 A. The -- we're much more -- much more

08 efficient.

09 The -- the -- you know you're going to

10 get good staff. We have control of hiring. We can

11 have good surgical techs.

12 You know, if you're at a place like the

13 hospitals now, it's sort of a crapshoot who you get

14 as a circulating nurse or the people in the room.

15 You don't have the quality control.

16 Q. Uh-huh.

17 A. So it's -- it's quality and it's efficiency

18 and profitability.

19 Q. And so with the volume comes the

20 profitability, presumably.

21 You have some added costs -- right? --

22 operating costs and --

23 A. Right. Absolutely.

24 Q. But, overall, the idea is the increased

25 volume of -- of the surgeries --

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01 A. Convenience --

02 Q. -- and convenience?

03 A. -- control, quality. All things that --
04 that benefit our patients.

05 Q. Okay.

06 A. I mean, I can give you a really prime
07 example.

08 Q. No. No. I think that's -- that's
09 sufficient. I --

10 So with more surgeries, that includes,
11 obviously, more cataract surgeries, as well.

12 A. We do more -- we do retinal surgery there.
13 We do kids with crossed eyes there. We do, you
14 know --

15 Q. Right.

16 A. -- eye surgeries.

17 Q. But I'm saying, as you increase volume,
18 you're increasing the volume of cataract surgeries
19 that you're able to do at the ASC than you were at
20 the --

21 A. In the same period of time, that's right.

22 So you can -- you can do more cases in
23 less time if you're more efficient.

24 Q. Right.

25 And so, annually, you end up doing more

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01 cataracts -- surgeries at the ASC than you did at --

02 A. Well, there's -- to some degree, there's
03 only a certain number of cataracts that have to be
04 done --

05 Q. Okay. That -- that's fair.

06 A. -- in the population.

07 Q. Sure.

08 A. So you can't increase the population of
09 people that come and have cataract surgery done by
10 building a new facility.

11 Q. Uh-huh.

12 A. But you can use the time much more
13 efficiently.

14 Q. You can use the time more efficiently.

15 A. Uh-huh.

16 Q. Okay.

17 A. So you have more time to ski.

18 Q. More time to ski, yes.

19 And --

20 A. We have a ski hill in the winter. It's
21 great. Granite Peak.

22 Q. Uh-huh.

23 So what was Precision Lens' involvement
24 in helping you create the ASC?

25 A. I'm not sure of all their involvement. But

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01 I know we ran many different pro formas before we
02 built our ASC, and we got advice from as many people
03 as we could.

04 We talked to other surgery centers in
05 the country. We had some consultants that looked at
06 the numbers we were doing to try to figure out, you
07 know, where our break-even point would be, after
08 running it for how long. All those kinds of things.

09 So we -- we tried to avail ourselves of
10 a lot of resources. And I do think that -- that
11 Precision Lens did suggest someone who ended up being
12 a consultant for us, a guy named Ron Blair, who
13 helped us with our surgery center design. And he had
14 done a lot of surgery centers around the country.

15 Q. So they introduced to this Ron Blair?

16 A. I don't know how the introduction took
17 place. But I believe that they gave us his name.

18 Q. Did they ever come out for meetings for
19 planning with respect to the ASC?

20 A. Ron Blair was involved a lot after we chose
21 him, yeah. He came for meetings.

22 Q. Not Ron Blair. I'm talking Precision Lens
23 people --

24 A. I -- I --

25 Q. -- Pete Gosz or Paul Ehlen or anyone else.

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01 A. I don't think they really had the nuts and
02 bolts for the -- the planning of the surgery center.
03 No, I don't think they were really involved with
04 that.

05 Q. You don't -- did they ever take you out for
06 meals to discuss the surgery center?

07 A. Not -- I don't recall ever going out for a
08 meal and talking about the surgery center with
09 them.

10 Q. Okay.

11 (Exhibit 27 marked for
12 identification.)

13 BY MR. SAMIE:

14 Q. Showing you Exhibit 26.

15 MR. DIXON: Hold on. Didn't we just
16 have 26?

17 MS. VERKAMP: Yeah, that should be 27.

18 MR. SAMIE: Oh, I'm sorry.

19 COURT REPORTER: Sorry. Yep.

20 MR. SAMIE: Okay.

21 MR. DIXON: Can we re-mark that one?

22 MR. SAMIE: Yeah.

23 MR. BIRRELL: I'm going to go over
24 that.

25 MR. DIXON: I hate to be a stickler for

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01 numbers.

02 MR. SAMIE: No. I appreciate that.

03 Here. I've got this one.

04 BY MR. SAMIE:

05 Q. So I'm showing you 27.

06 MR. SAMIE: Here's 27.

07 MR. DIXON: Thank you.

08 MR. SAMIE: Thank you, Joe.

09 BY MR. SAMIE:

10 Q. So this is an expense report from
11 Precision Lens dated February 2012. So this would
12 have been before you guys had finalized the -- the
13 ASC; right? The ASC opened in 2013.

14 A. Yeah. I think we were probably under
15 construction already by this point.

16 Q. Okay. So --

17 A. So I don't think there was -- I mean, I
18 think, by February of '12, most of the planning was
19 done, honestly.

20 Q. Who is Gary Scheidegger?

21 A. Gary Scheidegger. That's this one. He's
22 the guy who used to work for Allergan --

23 Q. Right.

24 A. -- I mean, 30 years ago or, you know, 25
25 years ago. And then he subsequently ended up working

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01 for Precision Lens.

02 That's the guy I referenced earlier
03 today.

04 Q. Yes.

05 So this is an expense report for him
06 from February 2012. And if you look down, there is
07 an entry for February 17. There's a couple in here.

08 A. Dinner. It says "Dinner with Cal Sprik and
09 Kevin Flaherty."

10 Q. And it says "Discussed new ASC."

11 A. Yeah.

12 But Gary was not really involved in
13 planning the ASC at all. He was a -- he basically
14 was a lens salesman.

15 Q. So -- but you did -- he did take you out for
16 dinner to discuss the ASC?

17 A. I -- I don't know if he did or not.

18 I see he wrote that on his expense
19 report, but I -- I question if we really talked about
20 ASC. Gary was not an ASC expert.

21 Q. Okay.

22 A. He was a lens salesman.

23 Q. I'm showing you 15, 16, and 17. So this
24 here looks like there's a -- this is -- 15 is an
25 email Bates ECLSA_008225. And this looks like an

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01 email chain that starts on February 14, 2012,

02 Pete Gosz, writing to --

03 A. My colleague Doug Edwards.

04 Q. -- to Doug Edwards, it looks like.

05 A. Right.

06 Q. And it's discussing a -- and I know you're

07 not on this email chain, but this will --

08 A. I'm not.

09 Q. -- make sense in a moment.

10 "Doug, are you around the week of March

11 12? Dinner with family and a beer? Also, I heard

12 Sharon left. Is that true?"

13 And then as you go up on -- on February

14 15, Doug Edwards says, "Can you do the 15th, Pete?

15 We have SC meeting Wednesday night."

16 And it looks like they scheduled this

17 meeting for March 15.

18 Does that seem to be what's going on

19 here to you?

20 MR. DIXON: Objection. Foundation.

21 THE WITNESS: I -- I don't -- I mean,

22 I -- this is, again, not between me. And -- and I'm

23 not sure what -- I mean, they're referencing our

24 former administrator, Sharon Long, who retired. And

25 Doug's confirming she retired.

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01 BY MR. SAMIE:

02 Q. Okay.

03 A. And the -- and Doug is saying we have a
04 service corporation meeting Wednesday night. That's
05 a meeting of our -- our service corporation at the
06 eye clinic.

07 Q. Okay.

08 A. That's nothing -- not a meeting with
09 Pete Gosz or anything. It's just -- he's telling him
10 we have a meeting of our physicians on that night.

11 Q. Well, let's just go to 16.

12 So this is an email, Exhibit 16,
13 ECLSI_010376. And this is an email from Pete Gosz
14 dated March 15, 2012, to Dr. Edwards, to you, and to
15 Dr. Hattenhauer. And the subject is "Back When."

16 It says, "Good a.m. Does 5:00 p.m.
17 work at the Back When?"

18 And Dr. Hattenhauer says, "I don't
19 think they open until 5:30 p.m. Want to try
20 somewhere else?"

21 So it looks like, on the 15th of March
22 2012, were you part of a plan to go out to dinner
23 somewhere, possibly Back When?

24 A. Possibly.

25 Q. Okay. And let's go to 17. And if you go to

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01 the third page of this document, where it says --
02 this is a Precision Lens expense report, month ending
03 3-31-12.

04 There's an entry here -- this is for a
05 Pete Gosz. Excuse me. Pete Gosz Precision Lens
06 expense report. There's an entry here for 3-15-2012.

07 Do you see that?

08 A. I do.

09 Q. It says "Back When Cafe, Wausau, dinner with
10 Wausau group, ASC plans."

11 A. Uh-huh.

12 Q. Were you at this meeting?

13 A. I don't know. I might have been. I -- I'd
14 have to go back and look at my calendar from 2012.
15 I'm not sure where I was seven years ago.

16 Q. Do you know if your family or significant
17 other or anything -- anyone like that would have been
18 there?

19 A. I -- I -- if I -- if I was there, my wife
20 or none of my kids would have been there.

21 Q. Okay. And that says "ASC plans"?

22 A. That's what it says.

23 Q. Okay. So were you there discussing ASC
24 plans in --

25 A. I don't know.

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01 Q. Do you have any reason to doubt this?

02 A. No.

03 I am sure he submitted this expense
04 report.

05 Q. Okay.

06 A. I just don't know if I was there or not.

07 Q. If we go back to the text messages. I don't
08 know which exhibit that was.

09 MR. DIXON: 23.

10 BY MR. SAMIE:

11 Q. Go back to 23.

12 A. Okay.

13 Q. So if you go to the Pete Gosz again, the
14 Pete Gosz text messages, that's halfway through at
15 some point. I'm looking for a March 15, 2012.

16 MR. DIXON: It's on page Flaherty 16.

17 MR. SAMIE: Thank you.

18 THE WITNESS: March 15, 2012? I have a
19 blank page in here.

20 BY MR. SAMIE:

21 Q. The page right before the blank page.

22 A. Okay.

23 Q. Okay. So March 15, 2012, that's the date
24 that we've been talking about for --

25 A. Okay.

Ds: 401/403,
sanction
126:18-22

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01 Q. And it looks there's a text from you to
02 Pete Gosz saying "At Back When now with Doug."

03 A. Okay. So -- so I was there, yeah.

04 Q. So you were there?

05 A. Yep.

06 Q. Okay. And then this next page is blank. Do
07 you know, kind of, what happened here? Do you know
08 if there's text messages that are missing here?

09 A. No, I don't know.

10 But it -- I doubt it. Because you see
11 March 15, 2012, 4:50 p.m., and then March 15, 2012,
12 at 6:00 p.m.

13 MR. SAMIE: Is this something we can --
14 we can look into just to see if there's anything
15 that's missing?

16 MR. BIRRELL: Sure.

17 MR. SAMIE: Okay.

18 BY MR. SAMIE:

19 Q. The same goes a little bit later in this
20 document. October 28, 2014. It looks like you're
21 texting from Australia.

22 Yeah, right there.

23 A. Yeah. Yeah.

24 So he's asking if I was in Wausau, and
25 I said, no, I'm in Australia.

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01 Q. The next page is blank again.

02 A. I think it's blank just because the --

03 Q. But then we pick up March 5, 2015.

04 A. Okay.

05 Q. That's a pretty large gap.

06 A. I've got my phone with me. I can look and
07 see if there's any gap in there. If you want me to
08 check it right now, I can.

09 Q. Yeah. Why don't we.

10 A. I can do that real easily.

11 Texts.

12 MR. SAMIE: We can go off the record.

13 THE WITNESS: Pete Gosz. Let me just
14 see.

15 VIDEOGRAPHER: Off the record, then,
16 sir?

17 MR. SAMIE: Yes, please.

18 VIDEOGRAPHER: Going off the record at
19 10:04.

20 (Discussion held off the record.)

21 VIDEOGRAPHER: We're back on the record
22 at 10:05.

23 BY MR. SAMIE:

24 Q. So we just went off the record,

25 Dr. Flaherty. Did you look to see if there were any

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01 text messages missing in that gap from October '14 to

02 March --

03 A. Yeah. And there were none missing.

04 Q. And there were none missing, okay.

05 (Exhibit 28 marked for

06 identification.)

07 MR. DIXON: Are we done with 23?

08 MR. SAMIE: Done with 23.

09 BY MR. SAMIE:

10 Q. Showing you 28. This is another expense
11 report from -- for Pete Gosz, Precision Lens, dated
12 month ending June 30, 2012.

13 And do you see the entry here, Bates
14 number is PL0001991?

15 A. Yeah.

16 Q. Do you see there's an entry here on
17 6-20-2012?

18 A. Uh-huh.

19 Q. And it's dinner with Drs. Flaherty, Edwards,
20 Hattenhauer, and Sprik?

21 A. Uh-huh.

22 Q. It looks like that's misspelled.

23 But, again, it says ASC plans, phaco.

24 (Clarification by court reporter.)

25 ASC plans, phaco. P-h-a-c-o.

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01 Do you see that?

02 A. Yep.

03 Q. Okay. So is this another meeting you that
04 with Mr. Gosz to discuss ASC plans?

05 A. Again, I don't really remember ever talking
06 about ASC plans much with -- with Pete Gosz. You
07 know, Pete, you know, sold us products that we used.
08 But he didn't really help in our planning of the AC.

09 So I'm not sure, while it says "ASC
10 plans," I think they -- they did say they could help
11 direct us to maybe get some vendors for, you know,
12 microscopes or equipment, maybe. And that might be
13 what it's about. But they didn't really plan the ASC
14 for us.

15 Q. Okay. But they were assisting in some way
16 to get you off the ground running; right?

17 MR. DIXON: Objection. Form.

18 THE WITNESS: I -- like I said, we --
19 we tried to get help wherever we could find it before
20 we put our AC together.

21 BY MR. SAMIE:

22 Q. And you found help from Precision Lens.

23 A. I think they were helpful to us, yes.

24 Q. Okay. And they took you out to eat to
25 provide that help?

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01 MR. DIXON: Objection. Foundation and
02 misstates the record.

03 THE WITNESS: The -- this -- his
04 expense report shows that it looks like he paid \$171
05 for dinner for -- one, two, three, four, five -- six
06 of us.

07 BY MR. SAMIE:

08 Q. Okay. I'm showing you --

09 A. It looks like it's a lot cheaper to eat in
10 Wausau than Milwaukee, by the entry after -- after
11 this. It's just four people for 723 bucks. Mr. B's
12 Steakhouse.

13 (Exhibit 29 marked for
14 identification.)

15 BY MR. SAMIE:

16 Q. I just handed you 29. This is another
17 expense report for the month ending September 12 --
18 excuse me, September 30, 2012. It's for Pete Gosz
19 again.

20 There's an entry in here for 9-25-2012,
21 Red Eye Brewing.

22 Do you see that?

23 A. Uh-huh.

24 Q. And that says "Wausau, Wisconsin,
25 Drs. Sprik, Flaherty" and it says "contract."

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01 Do you have any idea, you know, what
02 kind of a contract you'd be meeting with Mr. Gosz
03 about?

04 A. No, I don't know.

05 Q. No?

06 Do you think it could have related to
07 the ASC?

08 A. I don't know what it relates to.

09 Q. Sorry. I've got one more question on the
10 text messages. That's 23.

11 A. Okay.

12 Q. So, again, you're going to have to help me
13 out here, but I think this is early on.

14 MR. DIXON: What's the date?

15 MR. SAMIE: July 21, 2016, with
16 Paul Ehlen.

17 MR. DIXON: Flaherty 6.

18 BY MR. SAMIE:

19 Q. Are you there?

20 A. Yep.

21 Q. Okay.

22 A. July 21.

23 Q. So this looks like a message from 2016 from
24 Mr. Ehlen to you.

25 Does that sound right?

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01 A. Yep.

02 Q. And it says, "Great to see you today. Let's
03 ski together. Paul."

04 A. Uh-huh.

05 Q. And he said -- and you respond, "I'd be up
06 for it. Keep giving us a good deal on lenses."

07 A. Right.

08 Q. Does your skiing and the deal on lenses --
09 what do those have to do with each other?

10 A. Nothing.

11 MR. SAMIE: I think we are -- we're
12 done.

13 MR. DIXON: I'll go.

14

15 EXAMINATION BY MR. DIXON:

16 Q. Doctor, I think you know, I represent
17 Paul Ehlen, and I'm here for Precision Lens too.

18 And just to stick with that, you say to
19 Mr. Ehlen -- I just want to finish out that thread
20 that got stopped.

21 A. Sure.

22 Q. It says, "Keep giving" -- you say, "I'd be
23 up for skiing. Keep giving us a good deal on
24 lenses."

25 And what is Mr. Ehlen's response?

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01 A. "We will if the volume warrants the pricing.

02 We'll figure it out."

03 Q. Okay. And when was the last time that you
04 went skiing with Paul Ehlen?

05 A. The 2011 in Colorado.

06 Q. Two thous- -- five years -- over five years
07 earlier than this.

08 A. Yeah.

09 Q. Let me -- let me go back.

10 How long have you been a physician?

11 A. I graduated from medical school in 1984.

12 Q. And how long have you been a practicing
13 ophthalmologist?

14 A. I finished my residency in '88, and then I
15 did some fellowship training. I've been here in
16 Wausau since 1989.

17 Q. And I believe you said you have been,
18 essentially, using the same base lens for the vast
19 majority of your patients, which was an AMO product;
20 is that -- is that right?

21 A. Yes.

22 It started -- I -- I was introduced to
23 it when I was out in Massachusetts. There was a
24 physician named Roger Steinert, who was an
25 investigator, I believe, for AMO. And he was using

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01 foldable lenses through a small incision, and I
02 thought that was pretty revolutionary and wanted to
03 bring it back to Wisconsin when I start practicing.

04 So that's -- it didn't make sense to
05 have a small incision when you still had to make the
06 incision large to put the lens in. But with the
07 advent of foldable lenses, this has revolutionized
08 ophthalmology.

09 And AMO was the first one who had
10 the -- what I thought was a good lens, and that was
11 SI18. And that's when we started using that, in
12 the -- '89, 1990 about.

13 Q. And that company has gone through different
14 iterations as it's been purchased, but you basically
15 used the same lens as your base lens throughout your
16 entire career?

17 A. Different generations of it, yes. Same
18 style lens.

19 Q. Are you still using that today?

20 A. I am.

21 Q. And that's a --

22 A. Put them in --

23 Q. -- now it's a Johnson & Johnson?

24 A. -- this week.

25 Q. If I -- now it's a Johnson & Johnson

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01 product --

02 A. It is.

03 Q. -- is that right?

04 Are you still -- is Precision Lens

05 still the exclusive distributor for that lens in this

06 area?

07 A. I think so. But I'm not positive.

08 Q. You started using that lens prior to any

09 relationship with Precision Lens; correct?

10 A. Yes.

11 Q. You started dealing with Precision Lens

12 because it was the exclusive distributor in this area

13 for the lens you wanted to use?

14 A. Yes.

15 Q. Did Paul Ehlen understand that you used that

16 lens?

17 A. He -- he must have, because, again, he

18 showed up at our clinic and said, "I'm the

19 distributor for, you know, these lenses."

20 Q. Have you --

21 A. Many years ago.

22 Q. Have you explained to Mr. Ehlen why you like

23 this particular lens?

24 A. I have.

25 Because at a certain point, when the

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01 hospital in Rhineland didn't want to -- they were
02 purchased, and they didn't want to buy lenses from
03 Precision Lens anymore, they -- the -- people
04 suggested maybe I try a different lens. And I said,
05 "No, I'm happy with the lens I have."

06 So even though the -- Ascension, which
07 is a big company, they -- they weren't buying
08 Precision Lens for a while, I still stuck with the
09 same lens.

10 Q. Do you know who you buy visco from?

11 A. I don't, really.

12 Q. Have you ever paid attention to who
13 distributed the visco you purchased from?

14 A. No.

15 I just wanted a product that worked
16 well for my patients.

17 Q. We've talked -- what percentage of your
18 cataract surgeries do you use the lens that we've
19 been describing, in its various iterations?

20 A. 95 percent.

21 Q. And have you -- with your cataract
22 surgeries, have they all been medically necessary?

23 A. Of course.

24 Q. Is there anything elective about cataract
25 surgery other than if you want to see well?

Ds: 401/403
sanction
137:24-138:14

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01 A. Yeah, I mean, it is -- it's very rarely an
02 emergent procedure, unless you have a lens that's
03 ruptured or leaking. So cataract surgery is almost
04 always elective surgery. And it's always the
05 patient's call when to have to done based on their
06 symptoms.

07 It depends on their visual needs. If
08 you have someone who's a professional airline pilot,
09 they might have the cataract removed at 20/30 acuity
10 because they have glare complaints. If you have
11 someone who's sitting in the nursing home listening
12 to the radio all day, they might never need cataract
13 surgery, despite not being able to see the big E.

14 So it's patient dependent.

15 Q. But -- but they've all been medically
16 necessary, in your judgment?

Ps: 402/403
138:15-25

17 A. Yes.

18 I mean, you can do clear lens
19 extraction for someone, but that's a refractive
20 procedure; not going to be covered by -- by
21 Medicare.

22 Q. Are you familiar with how CMS reimburses
23 your clinic for procedures, cataract procedures?

24 A. I know there's a fee schedule that they
25 follow. And Medicare sets a price for a cataract

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01 operation, and then they pay 80 percent of the price
02 they set.

03 And then the patients that have private
04 insurance, the other 20 percent is, perhaps, billed
05 by a private insurance or supplemental policy.

Ps: 402/403
611

06 Q. And you're aware, though, that there's a
07 physician fee component to a cataract surgery that
08 CMS reimburses for the physician's skill; is that
09 right?

139:1-25-140:02

10 A. Correct.

11 Q. And that has nothing to do with surgical
12 supplies or anything. That's just for the physician;
13 is that right?

14 A. Right.

15 Q. Do you have any idea how much that is?

16 A. I think it's about 600, 700 bucks.

17 Something like that.

18 It's gone down dramatically since I
19 started. It was \$3,000 when I started practicing 30
20 years ago. Now the operation is better, more
21 effective, and we get paid about a fifth of what we
22 used to get paid for doing it.

23 Q. And for the surgical supplies and the use of
24 the ASC, are you familiar with there's a facility fee
25 that CMS reimburses?

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01 A. I know there is, yes.

02 Q. Do you know what the facility fee is?

03 A. I don't know off the top of my head, no.

04 Q. Does \$1500, more or less, sound about right?

05 A. It --

06 MR. SAMIE: Object to form.

07 THE WITNESS: I don't know what the
08 amount is.

09 BY MR. DIXON:

10 Q. Do -- what does the facility fee cover, if
11 you know?

Ps: 402/403/
602/611
140:10-25
141:1-24

12 A. It -- it covers the expenses for the
13 facility: nursing staff, the -- the supplies, the --
14 the microscope, all the -- the disposables that are
15 necessary at the facility. And I believe it covers
16 the lens too. I think the lens is pummeled into
17 that. I'm not positive.

18 Q. So you believe that the lens is a component
19 of that --

20 A. I think --

21 Q. -- facility fee?

22 A. -- that the lens is a component of the
23 facility fee, yes.

24 Q. Do you have any idea how much your ASC pays
25 for lenses?

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01 A. I think, for the lens that I use for my
02 patients, we pay about 90 bucks.

03 Q. And does CMS reimburse you differently if
04 you use a premium lens as opposed to a base lens?

05 A. No, they don't. And that's a problem.
06 Because it took an act of Congress to allow patients
07 to be able to have a premium lens.

08 So, initially, Medicare patients were
09 essentially discriminated against because they
10 couldn't have a premium lens. But now Medicare
11 passed a law that said people can privately contract
12 for additional payments if they want to have a -- a
13 premium lens put in. That's a lens to correct
14 astigmatism or a lens to correct a presbyopia. So
15 they -- the patients pay independently of that.

16 Q. So you're saying that CMS rules originally
17 wouldn't even permit Medicare patients to be
18 reimbursed for using a premium lens, and Congress
19 decided to change that?

20 A. Right. There had to be a law change to
21 allow that.

22 Q. But CMS only reimburses one --

23 A. The standard -- stand- -- for a standard
24 lens.

25 Q. You mentioned hosting Pete Gosz, who was

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01 then a representative for Precision Lens, golfing.

02 Do you recall that?

03 A. Yep.

04 I took him golfing at the Wausau County
05 Club one time.

06 Q. Do you recall hosting Paul Ehlen at dinners
07 at your home or at a private club?

08 A. Never a private club. At my house. I had
09 him to my house for drinks and appetizers and things
10 like that before, yes.

Ps: 402/403,
602

11 Q. And do you recall giving him an antique
12 piggy bank?

142:6-25-
143:07

13 A. I think I did give him a toy bank one time,
14 yeah.

15 Q. What --

16 A. It was just -- just -- yeah. Because I
17 collect -- I collect antique toys, antique banks.
18 And he was admiring the collection. I had a
19 duplicate of something. So I gave him a bank as a
20 present, yeah.

21 Q. When you stayed at Ian's -- Ian Swift's
22 condo, did Mr. Swift charge the others for the use of
23 the condo?

24 A. No.

25 Q. Did Mr. --

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01 A. Not to my knowledge.

02 MR. SAMIE: Object to form.

03 BY MR. DIXON:

04 Q. To your knowledge, when Pete Gosz or
05 Paul Ehlen joined the Wausau trip, were they charged
06 for the use of the -- Ian Swift's condo?

07 A. Not to my knowledge. I don't believe so.

08 Q. You mentioned flying with Mr. Ehlen down to
09 Chicago --

10 A. Uh-huh.

11 Q. -- when he got a jet.

12 A. Uh-huh.

13 Q. You know that Mr. Ehlen is a pilot? Ps: 402/403/602
14 A. Yes. 143:13-25

15 Q. He's been a pilot for a long time.

16 A. Uh-huh.

17 Q. Do you know if he enjoys flying?

18 A. He loves flying.

19 MR. SAMIE: Object to form.

20 THE WITNESS: He loves flying. He --
21 he's flown to Wausau many occasions when I wasn't
22 here, just for fun. He had a P-51 Mustang, and he
23 flew it over here a couple of times, weekends when I
24 wasn't around, but to -- to give Keith Kocourek, the
25 car dealer, a ride. He -- he brought it over for an

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01 air show one time. He went to Oshkosh. He loves to
02 fly. [REDACTED]

Ps: 402/403/

611

03 BY MR. DIXON:

144:1-25

04 Q. And you mentioned that Mr. Ehlen flew
05 himself and others when he joined this Wausau trip in
06 2010 and 2011. [REDACTED]

07 Do you recall that?

08 A. Yes. [REDACTED]

09 Q. When Mr. Ehlen wasn't participating in this
10 trip but the Precision Lens sales rep Pete Gosz was,
11 how did you all get out to Colorado?

12 A. Commercially. [REDACTED]

13 Q. So Precision Lens made no --

14 A. No. [REDACTED]

15 Q. -- effort to provide you with any
16 transportation? [REDACTED]

17 A. No. None. No. [REDACTED]

18 Q. I'm going to -- there's an allegation in
19 this matter that in January of 2010, Precision Lens
20 took you and Matt Hattenhauer and Doug Edwards, in
21 2010, January of 2010, on a ski trip to Colorado and
22 paid for assorted expenses and did not charge you for
23 that trip. [REDACTED]

24 Is that allegation true?

25 MR. SAMIE: Object to form.

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01 THE WITNESS: It's false.

02 BY MR. DIXON:

03 Q. There's an allegation in this matter that in
04 January of 2011, Precision Lens gave you helicopter
05 transportation in the ski area.

Ps: 402/403/
611
145:1-25

06 Is that true?

07 A. No.

08 I've never been in a helicopter with
09 Pete -- with anyone at Precision Lens, or they never
10 provided any helicopter transportation to me. That's
11 totally false.

12 Q. There's an allegation that Ehlen also
13 purchased ski jackets on the trip for more than
14 \$2500.

15 Did he provide you with a ski jacket?

16 A. Never did.

17 Q. And in terms of the accommodations and the
18 food and the wine, that was divided among all the
19 participants in the way you've described?

20 A. Yes.

21 Q. Did you inviting Mr. Ehlen on these trips in
22 January of 2010 and January of 2011, or any other
23 possible ski trip you've gone on, have anything to do
24 with your decision to purchase lenses?

25 A. No.

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01 MR. SAMIE: Object to form.

02 THE WITNESS: No.

03 BY MR. DIXON:

04 Q. Did -- did it have anything to do with your
05 purchase of visco?

06 A. Absolutely not.

07 MR. SAMIE: Object to form.

08 MR. DIXON: I think that's all I have.

09 Thank you.

10

11 FURTHER EXAMINATION BY MR. SAMIE:

12 Q. I have just a quick follow-up on this clinic
13 fee.

14 Is that a set amount? Ps: 402/403

15 A. For the -- what fee are you referring to?

16 Q. For the facility fee. Excuse me.

17 A. That's -- that's set by Medicare too.

18 Q. And that's a -- but that's a scheduled
19 amount that would be approved?

20 A. It -- and it varies from, I think,
21 geographic zone to geographic zone in the country
22 based on prior history of Medicare expenses.

23 So the -- the federal government sets
24 that fee. And there's been a lot of controversy
25 lately because the fee has been higher for hospitals

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01 than for surgery centers. And we -- you know,
02 surgery centers are less expensive to do surgery in.

03 I had a patient that had one eye done
04 at Rhinelander hospital, St. Mary's, and then the
05 other eye at the A- -- our ASC. It costs, like, a
06 thousand dollars less to have the surgery at our ASC
07 in Wausau than the hospital in Wausau -- or the
08 hospital in Rhinelander.

Ps: 402/403

09 She brought me the -- the bills and
10 showed me. In fact, she was so irate about it, she
11 sent me a note about it with the numbers on about how
12 much cheaper it was.

13 If she had known the surgery was going
14 to be cheaper at the ASC, she would have -- she would
15 have had both of her eyes done at our ASC instead of
16 the -- one at the hospital in Rhinelander and one at
17 our ASC in Wausau.

18 Q. So -- so the set amount for the facility
19 fee, the cost of the lens, if it -- if it costs you
20 less or costs you more, that doesn't affect what that
21 fee is going to be?

22 A. Correct. It doesn't.

23 Q. Okay. And the same thing for the
24 viscoelastics?

25 A. Right.

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01 Q. Okay.

02 MR. SAMIE: I think that's all I have.

03

04 FURTHER EXAMINATION BY MR. DIXON:

05 Q. Could I just ask, following up on that, so
06 am I right to understand that, when physicians decide
07 to open up an ASC and perform cataract surgeries in
08 an ASC, it actually costs the federal government less
09 money than if they did the surgeries in a hospital
10 setting.

Ps: 402/403

11 MR. SAMIE: Objection to form.

148:5-25

12 THE WITNESS: Yes.

149:1-2

13 I -- I think I have the note in my
14 wallet. Because -- where she talked about the
15 differential between the hospital in Rhinelander and
16 our ASC, the difference.

17 The total bill, for everything for her
18 cataract surgery -- this was done -- the St. Mary's
19 Hospital was October 8 of last year. The total bill
20 was -- at the hospital, was \$6,702.

21 When she had it done at the ASC, the
22 Eye Clinic Laser & Surgery Center, was \$4,746, done
23 on November 20.

24 So October 8 to November 20, six weeks
25 difference, and almost \$2,000 difference in the total

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01 expense for the cataract surgery at the hospital in
02 Rhinelander versus our ASC.

03 MR. SAMIE: Can we get a copy of this
04 so we have it?

05 THE WITNESS: Sure.

06 MR. GASKINS: Is there a pa- -- is
07 there patient information on there?

08 THE WITNESS: Yeah, there is.

09 MR. SAMIE: Could we at least get it
10 marked as an exhibit?

11 THE WITNESS: Actually, there's not.

12 MR. GASKINS: Okay.

13 MR. BIRRELL: Just --

14 THE WITNESS: There's not. Not her
15 name. That's just her handwriting. She just handed
16 it to me. That's the differential of price between.
17 You can have it.

18 MR. SAMIE: Joe, how do you want to
19 mark this?

20 MR. DIXON: You can mark it, and we'll
21 just maybe -- maybe make a copy of it and call it --
22 what number are we on now?

23 COURT REPORTER: 30.

24 MR. DIXON: 30.

25 Do you need it back?

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01 THE WITNESS: No. No. I just --
02 MR. SAMIE: Just photocopy it first
03 before we --
04 MS. VERKAMP: You'll get a copy.
05 THE WITNESS: Okay. That's fine. But
06 it just --
07 MR. SAMIE: It's going to have the --
08 THE WITNESS: That's fine. I don't --
09 you can put it anywhere. I don't care.
10 MR. GASKINS: Put it on the back.
11 MR. BIRRELL: Put it on the back.
12 THE WITNESS: I just -- it --
13 MR. SAMIE: I'll put it on the back.
14 THE WITNESS: But, I mean, since it was
15 such a big differential for her, you know, I've tried
16 to make more of a point if -- to tell patients that,
17 depending on their insurance, there might be a
18 difference in cost.
19 MR. SAMIE: I'm sorry. What number are
20 we on?
21 COURT REPORTER: 30.
22 MR. BIRRELL: 30.
23 MR. DIXON: 30.
24 MR. SAMIE: Okay. So this note is 30.
25 And we're going to circulate -- do you want to see

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01 this, Joe, right now?

02 MR. DIXON: No. That's okay. I'll
03 just take a copy.

04 MR. SAMIE: Okay.

05 MR. DIXON: Are we done?

06 MR. SAMIE: I think you're --

07 MR. DIXON: I'm done.

08 MR. SAMIE: Yeah, I think.

09 MR. DIXON: Thank you, Doctor.

10 THE WITNESS: You're welcome.

11 (Exhibit 30 marked for
12 identification.)

13 VIDEOGRAPHER: Going off the record at
14 10:28.

15 (Deposition concluded at 10:28 p.m.)

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01 CERTIFICATION PAGE

02

03 STATE OF WISCONSIN)

04 MARATHON COUNTY)

05

06 I, CHRISTINE J. WILLETTE, RDR, CRR,
07 CRC, Notary Public in and for the State of Wisconsin,
08 do hereby certify that:

09

10 Prior to being examined, the deponent
11 named in the foregoing deposition, KEVIN T. FLAHERTY,
12 M.D., was by me duly sworn to testify the truth, the
13 whole truth, and nothing but the truth. Said
14 deponent did not request the opportunity to read and
15 sign the transcript.

16 Said deposition was taken before me at
17 the time, date, and place set forth; and I hereby
18 certify the foregoing is a full, true, and correct
19 transcript of my shorthand notes so taken and
20 thereafter reduced to computerized transcription
21 under my direction and supervision.

22 I am neither counsel for nor related to
23 any party to said action, nor in any way interested
24 in the outcome thereof; and I have no contract with
25 the parties, attorneys, or persons with an interest
26 in the action that affects or has a substantial
27 tendency to affect impartiality, or that requires me
28 to provide any service not made available to all
29 parties to the action.

30 IN WITNESS WHEREOF, I have hereunto
31 subscribed my name this 16th day of June 2019

32

33

34

35

36 Christine J. Willette
37 - Registered Diplomate Reporter
38 - Certified Realtime Reporter
39 - Certified Realtime Captioner
40 Notary Public - State of Wisconsin
41 My Commission Expires June 19, 2021
42

Transcript of Flaherty, Kevin